

## SUMMARIZED

**RECORD OF TRIAL**

(and accompanying papers)

of

Gary P. Pittman

(Name Last, First, Middle Initial)

(b)(6)

(Social Security Number)

Sergeant

(Rank)

HqBn, 1st MarDiv

(Unit Command Name)

USMC

(Branch of Service)

Camp Pendleton, CA

(Station or Ship)

By

GENERAL**COURT-MARTIAL**

Convened by

Commanding General

(Title of Convening Authority)

Marine Corps Base

(Unit/Command of Convening Authority)

Tried at

Camp Pendleton, California,  
(Place or Places of Trial)

on

29 Apr; 28 Jun; 8, 28Jul; 9, 17, 23, 29, 30, 31Aug; 1-3 Sept 2004ACTION OF JUDGE ADVOCATE OR GENERAL COURT-MARTIAL CONVENING AUTHORITY (SPCM)/JAG (GCM)  
RCM 1111 and 1112, MCM, 1984)

UNIT COMMAND NAME		LOCATION OF JUDGE ADVOCATE OR GENERAL COURT MARTIAL CONVENING AUTHORITY JAG	DATE RECORD RECEIVED
ACTION		DATE	REMARKS
FINAL DISPOSITION: Findings and sentence, as approved by convening authority, correct in law and fact; to file			
OR Findings and sentence, as modified or corrected (see remarks), correct in law and fact; to file			
Acquittal or sentence set aside (see remarks), to file			
COPIES OF CMO DISPOSED OF IN ACCORDANCE WITH DEPARTMENT REGULATIONS			
JUDGE ADVOCATE OR LAW SPECIALIST			
SIGNATURE		RANK	DATE SIGNED

Front Cover

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DO: This deposition will come to order. The time is -- actually, give me a time hack.

DC[CAPT FOLK](CAPT JASPER): It is 0834, sir.

DO: It is 0834 on the 3rd of June of the year 2004. Before we proceed, are the two accused competent to proceed, and that would be Major Paulus as well as Sergeant Pittman?

ACC: Yes, sir.

DO: Trial counsel.

TC: Can I get those from you real quick.

Commanding General, Marine Corps Base, Camp Pendleton, has directed this deposition by the Appointing Orders, dated 11 May 2004.

The following persons are present: Colonel Applegate, as DEPOSITION OFFICER; Major Francis, as GOVERNMENT COUNSEL; Captain Folk, as DETAILED DEFENSE COUNSEL for Pittman, Captain Jasper, as DETAILED DEFENSE COUNSEL for Major Paulus; Mr. Higgins, as CIVILIAN DEFENSE COUNSEL for Major Paulus; and Then the accused, both accused Sergeant Pittman and Major Paulus are both here as well.

Our reporter today is Sergeant Johnson, and he has been previously sworn.

I'm a judge advocate certified and sworn under Article 27(b) and 42(a). I have not acted in any manner which might disqualify me from this deposition. And I'm ready to proceed. I believe I've given a copy of the Appointing Order to defense counsel.

Have you gotten a copy of those?

DC[CAPT FOLK]: I don't think we've received one, sir.

TC: Would you like to review those?

DC[CAPT FOLK]: If I could just get a copy following the proceedings.

TC: Okay. The accuser for both cases is Lance Corporal Prokuski. He was the accuser on the charge sheet.

DO: For Major Pittman [sic], defense counsel, please describe your qualifications, status as to oath, and readiness to proceed.

DC[CAPT FOLK]: Sir, I'm a bar certified attorney, qualified, certified, and sworn in accordance with Articles 27(b) and 42(a) of the UCMJ, and I was detailed to represent Sergeant Pittman by the Senior Defense Counsel for Legal Services Support Team Echo, and I have not acted in any disqualifying manner, sir.

DO: And you're ready to proceed?

DC[CAPT FOLK]: I am, sir.

DO: And for Sergeant Pittman.

DC[CAPT JASPER]: For Major Paulus?

DO: Major Paulus. I'm sorry.

DC[CAPT JASPER]: Sir, I'm Captain Jasper, I'm qualified and certified in accordance with 27(b) and 42(a) of the Uniform Code of Military Justice. I was detailed to this court-martial by myself in capacity of Senior Defense Counsel, Legal Services Support Team Delta. I have not acted in any disqualifying manner and I am ready to proceed at this hearing.

DO: And could I request that civilian defense counsel state his qualifications and business address please.

CC[MR. HIGGINS]: I'm a member of the bar of the State of California and the Commonwealth of Massachusetts. I'm also a reserve officer in the JAG Corps, United States Navy. I'm qualified and certified under 27(b), and I've also been previously sworn in this court-martial to represent as civilian counsel. My business address is 46 Wachusett, W-A-S-C-H-U-S-E-T-T, Worcester, W-O-R-C-E-S-T-E-R, Massachusetts 01609.



DO: All counsel ready to proceed?

*An affirmative from all counsel.*

DO: I am not an accuser, and I have not acted in any disqualifying capacity. I am a judge advocate certified and sworn pursuant to Articles 27(b) and 42(a).

I am a field grade officer, and as stated off the record, I'm a member of the following bars: California, Arizona, Texas, Virginia, as well as Maryland. I am neutral, detached, impartial, and fair.

Does any party wish to voir dire me at this time?

*A negative from all counsel.*

DO: Thank you.

Now, first let me just go through this with each accused. Major Paulus, the purpose of this deposition is to take and preserve the testimony of a witness for the use of trial or investigation. By "preserve," I mean that we will take the testimony, put it in a form in which it might be used at trial by court-martial. This deposition may also serve as a discovery device and allow the parties to learn the strengths and weaknesses of their cases.

Do you understand what I just told you?

ACC[MAJ PAULUS]: Yes, sir.

DO: Thank you. Do you have in problems or disabilities in reading, writing, understanding, and speaking the English language?

ACC[MAJ PAULUS]: No, sir.

DO: And I hope you understand that these are just forum questions. All right, major.

Um, and I assume that if you would choose to do so at this time, to look at R.C.M. 702 in your counsel's Manual for Courts-Martial as I advise you of your rights.

You also have the following rights: To be present

except when you in good faith -- excuse me, you, without good cause fail to appear after notice of this deposition, you are disruptive, or the deposition is ordered instead of production of the witness on sentencing and the convening authority determines that the interest of the parties and the court-martial can adequately be served by the deposition without your presence. And also you have the right to be represented by counsel.

Do you understand these rights?

ACC[MAJ PAULUS]: Yes, sir.

DO: Also, if you choose to do so, please look at R.C.M. 506 in your counsel's Manual for Courts-Martial as I advise you of your rights to counsel.

You have the right to be represent by civilian counsel at no expense to the government. That means, you or someone acting for you would have to retain a civilian lawyer if you wanted one. You have the right to be represented by the captain, your detailed defense counsel. You also have the right to be represented by another military counsel of your own selection are provided to you free of charge.

Do you understand these rights?

ACC[MAJ PAULUS]: I do, sir.

DO: Do you have any questions about your rights?

ACC[MAJ PAULUS]: No, sir.

DO: Do you want your detailed counsel to continue to represent you at this time?

ACC[MAJ PAULUS]: Yes, sir.

DO: And I assume you want your civilian counsel to continue to represent you at this time?

ACC[MAJ PAULUS]: I do, sir.

DO: All right. Sergeant Pittman, the purpose of the deposition, I'm just going to go over the same rights that are required by the Manual for Courts-Martial.

The purpose of this deposition is to take and preserve the testimony of a witness for use at trial or investigation. By, "preserve," I mean, that we will take the testimony and put it in a forum at which it might be used at trial by court-martial. This deposition may also serve as a discovery device, and to allow the parties to learn the strengths and weaknesses of their cases.

Do you understand what I just told you.

ACC[SGT PITTMAN]: Yes, sir.

DO: Do you have any problems with just focusing, reading, writing, understanding, and speaking the English language.

ACC[SGT PITTMAN]: No, sir.

DO: And once again, these are just formed questions that all accused have to respond to. Once again, I ask if you choose to do so, to look at the R.C.M. 702 in your counsel's Manual for Courts-Martial as I advise you of your rights.

You also have the following rights: To be present except when you without cause, fail to appear at the notice of this deposition, you're disruptive, or the deposition is ordered instead of production of a witness on sentencing and the convening authority the determines that the interests of the parties in the court-martial be adequately served by oral deposition without your presence, and you also have the right to be represented by counsel.

Do you understand these rights?

ACC[SGT PITTMAN]: Yes, sir.

DO: Once again, if you choose to do so, look at R.C.M. 506 in your counsel's Manual for Courts-Martial while I advise you of your rights to counsel.

You have the right to be represented by civilian counsel at no expense to the government. That means, you or someone acting for you would have to retain a civilian -- lawyer if you wanted one. You have the right to be represented by your detailed counsel. You also have the right to be represented by another military counsel of your own selection, if that counsel is reasonably available. Military counsel of your own selection are provided to you free of charge.

Do you understand these rights?

ACC[SGT PITTMAN]: Yes, sir.

DO: Do you have any questions about your rights?

ACC[SGT PITTMAN]: No, sir.

DO: Do you want your detailed counsel to continue to represent you?

ACC[SGT PITTMAN]: Yes, sir.

DO: Do you want any other lawyer to represent you?

DC[CAPT FOLK]: Sir, I'll answer that for the Sergeant. He has retained John Trainberg [ph]. He is a California Bar Certified attorney. He retained him to represent him in addition to me representing him in this case. Mr. Trainberg and Sergeant Pittman have waived his presence at this deposition, and that will continue on for the remainder of the depositions that place here and in New York City. He's aware of proceedings, and won't be here.

DO: And as the captain stated in substance, your understanding of your instructions to your civilian counsel?

ACC[SGT PITTMAN]: Yes, sir.

DO: Thank you, sergeant.

Government may proceed.

TC: Want me to swear the witness?

DO: Please.

CC[MR. HIGGINS]: Prior to swearing the witness, note that the counsel for Major Paulus lodge an objection to the deposition being used in substitute for any trial testimony at a later trial in this matter because the depositions were ordered by the convening authority. My client was ordered to be here for the depositions, but at this point in the case, without completed discovery, to think that we could adequately confront the witness before us in preservation for the trial is unrealistic, and I believe probably violates the constitution and our right to confront the witnesses.

With that objection noted --

DO: Submitted. Major?

(b)(6) Lance Corporal, was called as a witness by the prosecution, was sworn, and testified as follows:

*DIRECT EXAMINATION*

*Questions by the prosecution:*

Q. Please state your full name?

A. (b)(6)

Q. And currently, you're a lance corporal in the United States Marine Corps Reserve. Correct?

A. Yes, sir.

Q. And your current unit is 2d Battalion, 25th Marines?

A. Yes, sir.

TC: Do you need to switch around there so you can see me?

*The court reporter indicated no.*

DO: Major, if you bear with me and -- let me just go over some of the additional ground rules with respect to objections. I'm sure counsel are aware of those, but I'm just here to maintain order and I won't be ruling on any of the objections that are made on the record. But if counsel wants to make any objections, I welcome the opportunity to make an adequate representation of any objections that they may want to make has already been done, and I will just note that that failure to object prior to taking depositions on grounds which may be corrected, if the objection is made prior to the

deposition, will waive such objection.

Objections to questions, testimony, or evidence at an oral deposition, and the grounds for such objections will be stated at the time of the taking of the objection. If the objection relates to a matter if that objection had been made during the deposition, if the deposition is waived, if not made, at the deposition.

The scope and manner of examination would be the same as if it were a trial by court-martial. The government must provide the accused with any statements of the witnesses in the possession of the government. So it's just a slight variation of the rules of -- in Federal courts as to depositions with that respect.

CC[MR. HIGGINS]: Yes, sir. And just to reserve my record, I don't assent to that view of objections for these proceedings.

DO: So noted.

*Questions by the prosecution:*

Q. Okay. I think the last question asked here is 2d Battalion, 25th Marines. Right?

A. Correct, sir.

Q. Okay. Now, how long have you been in the Marine Corps?

CC[MR. ZIMMERMAN]: Let me say at this time, Lance Corporal (b)(6) is going to rely on his right to remain silent guaranteed by the 5th Amendment, United States Constitution, Article 31 of the Uniform Code of Military Justice. He's identified himself, which is all I believe he's permitted to do. If he's going to invoke those protections, which he does.

TC: All right, sir. He has the immunity grants.

CC[MR. ZIMMERMAN]: I think the next step is he would want to state on the record.

TC: Yes. At this point, Lance Corporal (b)(6) has been given testimony immunity and that has been granted by the commander, Marine Corps Base, for the actual general court-martial, and the two accused, and these depositions.

CC[MR. HIGGINS]: Can I see a copy of it?

TC: Yes.

CC[MR. ZIMMERMAN]: Now, these relate to the order to testify and immunity of the deposition. There is another order to testify in the immunity letter that relates to the actual court-martial, itself, which I don't have in front of me, but I can get --

TC: Well, I have the originals here. We can make more copies of those later.

CC[MR. ZIMMERMAN]: Do you want something made now?

TC: I think we can make them later. And we'll going ahead and mark those as depositions exhibits as well.

CC[MR. HIGGINS]: Can I see the immunity one more time?

DO: I'm going to suggest we just get copies of those made. I really appreciate that.

CC[MR. ZIMMERMAN]: How many do you need.

TC: Just one for each counsel.

CC[MR. ZIMMERMAN]: Two copies of everything.

DO: Thank you very much.

CC[MR. ZIMMERMAN]: There should be two documents for each accused?

TC: You should have four pages of paper.

Six total pages. One's for the trial.

DO: Just by way of suggestion, I would suggest that we consecutively number all the exhibits for all the depositions. Otherwise, you're going to have confusion if anybody has to use them at trial.

TC: Yes, sir.

DO: Can we take a recess.

*The deposition went off the record.*

DO: Let's go back on the record. Government proceed.

CC[MR. HIGGINS]: The time is 902.

DO: Thank you.

TC: Okay. Lance Corporal (b)(6) has been given his immunity documents, at this point, sir, you wanted to --

CC[MR. ZIMMERMAN]: Yes. Lance Corporal (b)(6) having invoked his right under the constitution and under the code has been handed a testimonial immunity document that is signed by a colonel. And just for the record, I have a problem with a colonel -- if I see the signature block, is listed as a commander, is he a general court-martial convening authority? Because only a general court-martial convening authority can grant immunity.

TC: Yes, sir. At the time he sent that document, he was the general court-martial convening authority for Marine Corps Base.

CC[MR. ZIMMERMAN]: Okay. Although we have received testimonial immunity document, we don't think that Lance Corporal (b)(6) is sufficiently protected, so we're not going voluntarily answer any questions, for fear that somebody might interpret that as a waiver.

TC: At this time, sir, government pursuant to that same document that we were discussing, which is the 28 May 2004 document which is marked as Deposition Exhibit 7, by order of that document, sir, the Commander of Marine Corps Base orders her Lance Corporal (b)(6) to testify at this deposition.

CC[MR. ZIMMERMAN]: Okay. Just so it's clear, procedurally what has happened historically in this matter, is counsel for the government has provided counsel for Lance Corporal (b)(6) a previous grant of immunity signed by -- testimonial immunity signed by the Commanding General of Camp Pendleton, California. And an order to testify at the two general courts-martial of the two individuals assembled here today, and it was our view that that did not apply to this proceeding today.



In response to that, the Colonel Hampton, acting as the commander of Camp Pendleton as opposed to the Commanding General of Camp Pendleton has issued this order to testify at this deposition. And that order applies only to this deposition.

So given counsel's representation, which is good enough for me, that Colonel Hampton is, in fact -- was in fact the general court-martial convening authority at the time because I am also in the opinion, although case law is not crystal clear on this, that only a general court-martial convening authority can order someone to testify under a grant of immunity issued by that same convening authority.

Lance Corporal (b)(6) is going to answer your questions under a grant of immunity.

CC[MR. HIGGINS]: And defense would ask just as clarification and/or an objection in viewing the documents, there is language contained within in the talk about he could use other investigations as part of the immunity. It's our understanding that that would be immunity each time for this witness and for other witnesses, they would have to be ordered for such interview, and as such that the defense would have the right to be present at any interviews conducted based upon any grant of immunity to this witness or any future witness. If we had to we would have to be given prior notice and order. Thank you.

TC: Well, yes, but obviously Mr. Zimmerman, I don't think he's going to allow Lance Corporal (b)(6) to do anything without him being present so --

CC[MR. HIGGINS]: We've got a few more depositions, sir, in the next couple of days.

TC: All right. Anything else from anybody? No. Okay.

*Questions by the prosecution:*

Q. Back to where we were. Where we left off with my last question was how long have you been in the United States Marine Corps Reserve?

A. For seven and a half years, sir.

Q. Were you ever on a period of active duty? Meaning, before you went into the reserve status?

A. Before reserve status? No, sir.

Q. Okay. What's your MOS?

A. An 0151, Administrative Clerk, sir.

Q. Say again.

A. Administrative Clerk.

Q. Okay. All right. Now, you were deployed in support of Operation Iraqi Freedom. Correct?

A. Yes, sir.

Q. When did you get called up for that?

A. March 2003.

Q. At that time, you were called up with 2/25. Right?

A. Correct, sir.

Q. Now, at some point, did you go with 2/25 when they went to Camp Lejeune?

A. Correct, sir.

Q. Okay. When you were at Camp Lejeune, did you undergo any type of Law of War or EPW training?

A. We had a class, yes, sir.

Q. Please describe what type of class you had.

A. If I remember, it was a class on kind of prisoners, EPW's, like, if we were on patrols or how to be alerted if we were in a command with -- just keeping an eye out for terrorists.

Q. When you say how to handle EPW's what do you mean?

A. Like safeguard.

Q. Okay.

A. Like, if we were on patrols and we catch EPW's or prisoners of war, how to safeguard them.

Q. What do you mean by safeguard?

A. What I remember is we capture, we search, seize -- I can't remember the rest, sir.

Q. Okay. Is there any discussion on how you should treat them?

A. Well, there was but I can't remember, sir, to tell you to truth. It was a year ago.

Q. Now, do you recall who was giving the training?

A. Yes, sir. It was Major Paulus.

Q. Okay. Now, was this training, was there any type of Power Point presentation or was it just him lecturing?

A. He was lecturing, then he had some source resources of, like, examples of some building that got attacked or something like that, and examples of awareness of people that work within installations and because they hire outside employees. Just how to be aware.

Q. How long was the training?

A. It was an all day event, but it was different classes. So I can't really remember, sir.

Q. During any time during that training do you recall the Geneva Convention being mentioned?

A. I can't remember, to tell you to truth.

Q. Okay. Do you recall whether there was any mention of the "Golden Rule". Do you know what I mean when I say that?

A. No, sir.

Q. The phrase, "Treat them like you would want to be treated"?

A. Yes, sir.

Q. And who said that?

A. Major Paulus.

Q. What was your impression when you heard that?

A. That treat them exactly like you said, if you were to be treated if you were to be captured.

Q. Okay. All right. Other than that period of instruction, did you ever receive any other type of instruction of how to handle EPW's or detainees or Law of War or anything like that?

A. No, sir. Basically, most anything that came close to it was how to -- if we captured, anybody how to safeguard them how to search them and stuff like that. That's the closest thing that I could remember.

Q. Okay. Let's fast forward. At some point you ended up at Camp Whitehorse Detention Facility. Right?

A. Yes, sir.

Q. When was that?

A. April, sir.

Q. And that of course is 2003. Right?

A. Yes, sir.

Q. At that time, who was the OIC?

A. It was Major (b)(6)

Q. And the staff NCOIC?

A. Staff sergeant (b)(6)

Q. And who was the NCOIC?

A. There were a couple. It was from sergeant Pittman to sergeant (b)(6) Sergeant (b)(6) It depended upon each shift and each group.

Q. Was there a -- among the sergeants, was there someone who was -- when I say NCOIC I mean non-commissioned officer in charge. Even though you might have a number of sergeants, one might be in charge of all the rest. Was there one individual who was in more of a leadership possession than the others amongst the sergeants?

A. Probably Sergeant (b)(6)

Q. How long was Sergeant (b)(6) at the facility?

A. He was there throughout the whole evolution, but I remember he left for some period of time, and went back to North Carolina for some problems he had.

Q. Okay. When Sergeant (b)(6) was absent, who then stepped into that role?

A. To tell you the truth, it could have been anywhere from Sergeant Pittman to Sergeant (b)(6)

Q. Okay. Um, all right. When you got to the detention facility, did you receive any type of training on again same type of things -- treatment of the EPW's, how to handle EPW's?

A. The closest we ever got was just how to search them like during in-doc.

Q. Who taught you how to do that?

A. Probably Lance Corporal (b)(6) Sergeant Pittman.

Q. Any reason why it was those two?  
A. In their civilian jobs they are correctional facility officers, so they have experience.

Q. Did it seem like those, that (b)(6) and Pittman were being relied upon because of their experience?  
A. Yes, sir.

Q. All right. Let's talk. Let's focus now specifically on Sergeant Pittman. Okay?  
A. Yes, sir.

Q. Was he at the detention facility before you or after you -- or after the time that you arrived?  
A. I think we all arrived at the same time, sir.

Q. Okay. During the time that he was there with you, did you ever see him strike, hit, in any way -- strike or hit an EPW or detainee?  
A. No, sir.

Q. So never?  
A. No, sir.

Q. Okay. Not even if a detainee got out of hand?  
A. No, sir. We were on different shifts, so I rarely saw him. Maybe during in-doc, that's the only time I actually spent some time with him, but other than that, we're on different shifts.

Q. Okay. Well, let's talk about in-doc.  
A. Okay, sir.

Q. What was the procedure at in-doc?  
A. The capturing unit would bring the EFW's to the facility. To exchange the good handling. Escort the prisoner to the outside cell, then each gets searched one at a time, depending on how many of them come. They would get searched and then they would be put in -- they would be logged in and put them into the facility until the HET Team came and determined if they were EPW's or detainees.

Q. Okay. Did you participate on the in-doc phase on a frequent basis?  
A. I would say, about 20 percent out of 200 detainees that went through there.

Q. All right. And at no time during that period of time did you ever see Sergeant Pittman or Lance Corporal (b)(6) or anybody strike an EPW?

A. No, sir. Strike? No, sir.

Q. Okay. Hit them?

A. No, sir. If anything, try to control.

Q. So when you say "control", what do you mean?

A. Well, the language barrier was one thing, and also it was just if we wanted for them to understand this, we'd have to that have to control them by placing them against the wall, like, spotted.

Q. Um, now, during this time, did you ever have an EPW that was unruly or wouldn't cooperate during the in-doc?

A. We had a couple, but from -- I mean, in terms of my in-doc, sir, I can't speak for others, but that's about it.

Q. Okay. Who is on your shift?

A. It was (b)(6) and myself.

Q. Okay. How about Sergeant (b)(6)

A. Sergeant (b)(6) he was not in my group.

Q. Okay. Now, were you present when (b)(6) was brought to the camp?

A. No, sir.

Q. So you didn't see him being taken off the HMMWV's at all?

A. No, sir.

Q. What were your doing at that time?

A. Probably by the - we had a, some type of recreation center, like a lunchroom and we watched movies there, so I was on R and R. I was watching DVD's, like an everyday thing, just to get away.

Q. Now, obviously you Saturday during the 32 hearing, and you heard Lance Corporal (b)(6) testify about this (b)(6) that came into the camp.

A. Yes, sir.

Q. Did you have any dealings with that --  
A. No, sir.

Q. Okay. So you weren't -- did have any observation when  
(b)(6) were guarding him?  
A. No. Because at the time, we were getting suited up.

Q. Suited up?  
A. There was a protest and at the time we had to go to get our Kevlar and our flak jacket on and suit up.

Q. Okay. Let's talk about that. Since you're mentioning it. What exactly did you do in regards to this protest?  
A. I safeguarded the prisoners, the detainees, as everyone else -- that's what I did. Just -- they gave the words "suit up", came back and let the others suit up and get the word.

Q. What time of day was that?  
A. Probably anywhere from 1700 to 1800.

Q. All right. How long did you remain in this suited-up capacity?  
A. Anywhere from 30 to 45 minutes.

Q. What happened - okay. So after that 45 minutes, what happened?  
A. Everything calmed down. We were given the word that the protesters went away. Go back to daily procedure, daily schedule.

Q. What did you do?  
A. We went back to our shift. Our shift was from 1600 to 2000.

Q. Okay. At 2000 what were you doing?  
A. We switched shifts. Corporal (b)(6) and (b)(6) had come out.

Q. Okay. So you switched shifts, but after you got off your shift, what did you do at 2000?  
A. I went for a PT run. I took my shower, probably went to CB to watch some movies.

Q. Between 2000 and 2400 on that day -- so you were just in, like, an off-duty, I guess -- I guess you're never off duty, but a stand-down type of situation?  
A. Yes, sir.

Q. Okay. So this threat be the protestors, that was gone by that time?

A. Yes, sir. We always have a 24-hour security post.

Q. Okay. During that time frame, been 2000 and 2400 on that particular day, which was 5 June, what -- did you see Major Paulus during that time frame?

A. I'm sorry, sir, from 2000 to 2400?

Q. Right.

A. I didn't see him anywhere.

Q. Okay. Did you have any idea or any impression where he might have been at that time?

CC[MR. HIGGINS]: Objection. Calls for speculation.

WIT: No, sir.

*Questions by the prosecution:*

Q. Okay. Let's talk about (b)(6) specifically. Okay?

A. Yes, sir.

Q. Talk to me about the time that you can recall when you first saw him.

A. I first saw him probably on one of my shifts, sir. I remember him vaguely. I just remember him with the sandbag and the flexycuffs. I guess it was before the HET Team. I remember him vaguely. It was probably one of those morning shifts where everyone was just sleeping, and I remember him vaguely. The next day would be the --

Q. Okay. So if he comes into the camp on 3 June, did you -- so you did see him that day, that first day that he came in?

A. He came on the ton 3rd of June. I saw him on the 4th.

Q. On the 4th. Okay. And thought it was earlier -- he was still in isolation phase at that point?

A. Yes, sir.

Q. And isolation being 50/10 phase?

A. Something like that.



Q. Okay. Were you guarding him at that time? Or how was it that you were able to observe him?

A. I believe I had my shift.

Q. Okay. Okay. So you said he was sandbagged and flexycuffed at that time? Were the flexycuffs in the front or back?

A. In back.

Q. How did he appear to you at that time?

A. Just like any other prisoner. I really didn't think much of him because when they come in they come in two or three times, which I figured he was another prisoner. I really didn't give him much thought.

Q. Okay. Was he sitting or standing?

A. He had to sit.

Q. He was sitting? Okay. Did it appear that he was suffering from any ailments at that time?

A. No, sir.

Q. Okay. Did anybody report to you during that period of time that he was suffering from any health problems to be observed?

A. No, sir.

Q. Um -- okay. So after that morning on the 4th of June, when was the next time that you observed him?

A. Probably the next time I can remember him was the 5th of June.

Q. Okay. Well, let's talk about that. What was your interaction with him on that occasion?

A. What do you mean by that question, sir?

Q. How was it that you observed him?

A. On the 5th of June?

Q. Right.

A. Well, it was my shift from 1600 to 2000, and I walk in to my shift, and as soon as I walk in he was telling me that this EPW was being belligerent, you have to take care of it, and you have to handle it. I was like what's going on so I walk in and I see Major Paulus, Major (b)(6) so I'm thinking it's serious.

CC[MR. HIGGINS]: Objection. Narrative.

WIT: And I see a prisoner and he's just in a puddle of feces and defecation, and I'm looking and I'm like what's going on. So I got most of word from Sergeant (b)(6) this guy he shited on himself.

Q. Okay. Let's stop you there for just a moment. Was this prison, is that (b)(6)

A. Yes, sir.

Q. And you actually saw the puddle of defecation?

A. Yes, sir.

Q. Describe the smell for me?

A. It was a bad smell. Especially with the heat because on the average, it's a 130 degrees out there, and we were -- it smelled horrendous.

Q. Okay. Can you recall, just based on your estimation, how hot it was on that day at that time?

A. It was pretty hot. I don't know, sir. I know on average at that time, it was 130, 120.

Q. Okay. Well, let me show you a couple of photos here. They've been marked as Deposition Exhibits 3 and 4.

DC[CAPT FOLK] (CAPT FOLK): I'm going to object to the admitting of any of these photos at a deposition or a trial.

*Questions by the prosecution:*

Q. Okay. First of all, I'm going to show you Deposition Exhibit 3. Do you recognize that individual?

A. That's (b)(6) sir.

Q. Okay. So that's a person you saw there laying in their defecation on 5 June?

A. Yes, sir.

Q. Okay. And how about Deposition Exhibit 4, do you recognize that individual?

A. Yes, sir.

Q. And who is it?

A. It's (b)(6)

Q. Okay. Thank you.

CC[MR. HIGGINS]: By previous agreement of the parties,

photocopies will be substituted for the two exhibits just discussed. Originals will be retained by the trial, counsel copies will have been provide to the parties.

*Questions by the prosecution:*

- Q. Okay. So you've seen (b)(6), has the defecation, laying in the defecation, it's hot. What happens next?
- A. So we walk into our shift, we're just expecting a regular shift, and we walk in and Lance Corporal (b)(6) was next to me, and Sergeant (b)(6) was coming by, was coming by behind, sir. And we walk in and we were just like, all right. I already got the impression from Corporal (b)(6) that this guy is going to be belligerent. This prisoner is going to be belligerent, so I remember just -- I know we had a prisoner coming in who was known for a high profile prisoner. So I knew we were supposed to use this room. We were supposed to clean it, put a cot in there for that prisoner.
- Q. Now, this prisoner, he was the (b)(6)
- A. Yes, sir. So when I saw him in there, I was kind of like what's going on. So I walk in and it was just like we had to take care of this situation.

CC[MR. HIGGINS]: Objection. Narrative.

*Questions by the prosecution:*

- Q. Well, let me ask you this, who gave you the information on -- that you were going use that particular cell for the (b)(6)
- A. For me it was just common sense because we only got two cells, and one cell was filled with all the prisoners. I believe (b)(6) was there too, he was just wandered by concertina wire, so I figured that room would be saved for the (b)(6). I didn't know he was a (b)(6). I just knew he was a high profile prisoner.
- Q. Okay. Well what did you think you had to do with Mr. (b)(6)
- A. At the moment, I just -- when I saw him, I was just like, all right. I got the impression he was being belligerent. I guess we got to get him out and clean the area.

Q. But why did you have that impression?  
A. What? To clean the area?

Q. Get him out and clean the air.  
A. What -- not just to get him out to clean the area, I knew he wasn't going to be there. I knew he had to get back in the other room because that one was for the prisoner.

Q. Okay. But how did you know -- did someone tell you that?  
A. We all live in the same barracks, so we all talk in the mornings. We would be like somebody's coming. Like who? Just scuttlebutt.

Q. All right. So you have your impression of what needs to be done, so what happens?  
A. So I walk in and first thing we did was I remember telling Lance Corporal (b)(6) to go get some masks and gloves because it was just the prisoner was covered in feces, and at that time, like a week before, Major Paulus set up a class for us for how to handle or -- not handle. How to be more careful with detainees coming in. He set it up with Doc (b)(6) to give the class about how we were doing things really wrong. To the fact that Tuberculosis, and all that was out there and we're not protecting ourselves. So we started using surgical masks, and he went to get that, but he couldn't find any or something like that. So he came back with gloves.

Q. What kind of gloves?  
A. It was black gloves, leather gloves.

Q. Okay. Like the military issue --  
A. Yes, sir.

Q. Okay.  
A. So we just - it wasn't like anything planned. It was like, what do we do? So we just moved the prisoner from the puddle to the side of the room, and we figured that we would clean the puddle, I guess, have one of the other detainees clean the puddle, and clean him. Then, we would figure out, you know, go --

Q. Okay. Let's talk about that little more specific?  
A. Okay.

Q. (b)(6) is, you said he was laying in the puddle.  
Right?

A. Yes, sir.

Q. Was he face down or was he on his back?

A. Face up.

Q. Okay. What was he doing at that time?

A. He was aware that when we walked in, his eyes he would look at me, just on and off mumbling in Arabic because Arabic is his language.

Q. Okay. Was he moaning or anything like that?

A. He's just mumbling in Arabic.

Q. Okay. How did you and (b)(6) move him out of the puddle?

A. When I first -- (b)(6) went to go get the gloves, sir, came back -- I'm sorry, sir. It's been a while, I'm just trying to recall.

At first when he went to get the gloves, I nudged the prisoner, (b)(6) three times. Told him to "Goom", which means stand. I also told him to stand in English. I told him in English and then in --

Q. Okay. Now, when you say you nudged him, what do you mean?

A. I nudged him.

Q. With what part of your body?

A. With the side of my foot.

Q. Okay. Where?

A. Probably like his shoulder -- like his arm.

Q. Now, when you say "Nudged," what type of force -- you were using your boot?

A. Yeah. The side of my boot, sir.

Q. Okay. How much force would you say you used?

A. Not much force, just a nudge. Just like if somebody was trying to wake myself up.

Q. So if you describe from one to ten, one being just lightly grazing someone, a ten being hard enough to break bones, where would you say it was?

A. A two.

Q. All right. So you're nudging him. Telling him, "Goom" stand up, what happens next?

A. I believe (b)(6) came back with the gloves, and then I moved him. I grabbed him from his shoulder and moved him to the side of the room.

Q. Okay.

A. There's a cot there. Then we moved him to the side of the room.

Q. Just you, yourself, were doing this?

A. Yes, sir.

Q. When you say you grabbed him by the shoulder, what do you mean?

A. Well, his robe. At the point in time, the defecation was just from the waist below. So I actually grabbed him from his shoulder.

Q. So you grabbed his robe?

A. Robe. Shoulder.

Q. So up the upper arm?

A. I remember my fingers being by the armpit.

Q. Were you wearing gloves at this time?

A. Yes, sir.

Q. Describe - okay. At that time when you were moving him, what was (b)(6) doing?

A. He was just on and off mumbling in Arabic. That's all I can remember him doing.

Q. How about the possession of his legs?

A. When I pulled him to the side, he was just probably, like I said, it was -- his leg was straight out.

Q. How about his arms?

A. They were straight out.

Q. Was he dead weight?

A. Something like that, yes, sir.

Q. How heavy was he?

A. Probably over 200 pounds.

Q. Was he difficult to move by yourself at that time?  
A. Well, not really because it was slippery because of the puddle.

Q. Okay.  
A. And it was also sandy. It was concrete with a lot of sand there.

Q. Okay.  
A. It was just with the robe and all.

Q. Okay. Now, how much do you weigh -- well, how did you weigh at the time?  
A. 208, probably.

Q. Did you exercise -- well, you're a Marine, so you exercise somewhat, but I mean, do you lift weights on a regular basis?  
A. Well, in Iraq, we were just doing pull-ups, runs, and sit-ups.

Q. How many pull-ups could you do at the time?  
A. Probably 11 or 12.

Q. Do you lift weights at all? Or did you? I mean, obviously in the desert you're not, but prior to deploying?  
A. Prior to deploying? I did somethings to that effect. I was mostly into callisthenics.

Q. Okay. Have you ever tested how much you can bench press?  
A. Yes, sir.

Q. How many can you?  
A. The most? Probably 315.

Q. And that's one rep?  
A. That was just once. That's the most I ever did.

Q. Okay. All right. So you moved (b)(6) out of the puddle by yourself?  
A. Yes, sir.

Q. What happens next?  
A. We just waited to get the word of --

- Q. Now, who's in the room when you're moving (b)(6) the way you did at that time, who --
- A. I remember Major Paulus being there, and Major Froiter. They were walking in and out so it was when my back was turned. But I remember Major Paulus and Major Froiter being there.
- Q. All right. So again, you moved him. What happens next?
- A. He just -- I guess we were going like by the moment I remember Major Paulus telling me to have him stand and face the window, and that's when I told -- I had put the prisoner Indian style facing the wall. He was like have them stand and face the window. And when I was given that, I told the prisoner to goom and to I told him to -- I told him in English goom, and I believe that's when Sergeant (b)(6) walked in, and I remember turning back Sergeant because he spoke Arabic. I guess he was called in for that. So I had the prisoners stand and face the wall, and when I looked at Sergeant (b)(6), he said it in Arabic and he got no response. He gave me a shrug, and that's when I looked at him and told him, "Okay. Stand up." So I pushed him, tilted over, and I grabbed him from the shoulders, from the arms and I had him stand and I told sold him to face the window. "Look out there. Don't move," that's when I started walking away. And as I was walking away, there's a diagram of the -- I don't know if you're familiar with the facility, how the room was set up with the concertina wire --
- Q. Right.
- A. I'm walking towards the first concertina wire that's divided. I remember Major Paulus being here and Major --

CC[MR. HIGGINS]: Objection narrative.

*Questions by the prosecution:*

- Q. All right. Well, let me ask you this question. Let's balk up just a moment. Let's talk about from the time where you began what you were talking about from the time that you stopped dragging -- you know, dragged him to where you dragged him, until the time you got him to stand up. Okay? Let's break that down a little bit.



- A. You said that you had him sit up first?  
Yes. When I put him - when I put him in the area earlier, I had him sit. I was told to have him face the wall, so I had him sit Indian style.
- Q. Okay. Indian style. His legs were crossed?  
A. Legs were crossed.
- Q. Okay. What was he doing when you were making him do that?  
A. Well, he was just - all I could basically remember from him was just him saying -- talking in Arabic. I remember him going on and off in Arabic.
- Q. Okay. Was he moaning, having any difficulty breathing from what you saw at that time?  
A. Not that I can remember, sir. But I mean, he was -- I mean, he's just -- not that I can remember, sir.
- Q. Okay. So you have him sit up, what happens after that? He said you had him stand up?  
A. Yes, sir.
- Q. And how did you get him to do that?  
A. Well, he helped me when I grabbed him from the shoulders he helped me get up -- he helped himself get up. I just just kind of --
- Q. Okay. So he stood up on his feet?  
A. Yes, sir.
- Q. All right. And then you told him to look out the window?  
A. I told him to look straight ahead, yes, sir.
- Q. And how did he appear at that time?  
A. At that time, he was just the looking straight out of the window, and when I gave him a command he was just looking. He wasn't hunched over or anything. He -- I mean, his head was down, but looking outside, but his body was straight up.
- Q. Okay. All right. So you're up to that point, what happens next?  
A. So I walk away to see whatever's next to do or how to handle the situation, to re-coop, because I'm walking away. I remember looking at Major Paulus and Major Froiter, and like, I guess -- I mean I could still see

him through prerriferal vision, so as I'm walking away, they're looking at him, and then they are like, I guess looking at what he's doing, and I see him forward towards the window and puts his hand out against the ledge because there's a ledge, but between him and that ledge it was concertina wire. And it's double stacked. So as I see him and I see him going forward, I look and he sticks his hands out and he grabs it. He hits the ledge, and intertwines with the concertina wire.

Q. Okay. So he put his hands out, I'm just going to talk and if you could just correct me if I'm wrong.

A. Yes, sir.

Q. He puts his hands out -- you put your hands out on the table in front of you to demonstrate, and you had your, the heels of your hands braced up against the table with your arms straight out. Correct?

A. Yes, sir.

Q. Okay. Now, what portion of him was starting to make contact with the concertina wire at that time?

A. As soon as he broke -- I guess he broke his fall, he just fell right in. It was probably his buttocks area.

Q. Okay.

A. And he --

Q. I'm having a hard time visualizing that that. So he's falling --

A. As he falls in. His body falls right in. I guess -- I know his butt fell in. The side of his butt went in first.

Q. Okay. Let's break that down.

A. Okay, sir.

Q. So he's falling then puts his hands out on the ledge?

A. No. As he's falling, his hands are coming out, and he stops his fall with his hands because there was a ledge, and then there's a window. You could touch the ledge without touching the concertina wire.

Q. Okay.

A. And as he falls, that's when he turns in to the concertina wire.

Q. Okay. All right. So what position is he in when his fall stops?

A. He's in one of the gaps because the concertina wire was circular, it's spiral, and there's gaps in it. So he's in one of the gaps, and he's inside.

Q. Okay. Inside the concertina wire?

A. Yes, sir.

Q. Okay. How does he appear to you at that time?

A. I saw him go in. I'm looking at him like what are you doing. So I look at him and at first I was like, all right. You're whacked out. Like I said, belligerent that, he wouldn't listen to my commands, and -- we had the translator there to tell him all you need to do this do that, and he wasn't paying attention to his orders. So I was like, now he's being belligerent, and now he's just doing his own thing because as he was inside, he was holding on the concertina wire.

Q. Okay. With both hands or one hand?

A. Both hands, sir.

Q. Okay. How was he holding on to it?

A. Well, he was sitting within that gap, he was holding on with both hands, and he was just again --

Q. All right. Holding your hands like you would be holding a bat, I guess, or a sword?

A. Yes, sir.

Q. Um, so how is it, please describe how he was in a position to be holding the concertina wire like that?

A. Well, the spiral one of the, I guess, the threads, and it just got caught in front of him, and he was just like grabbing it from the side like this, and he was in the gap. And I'm looking at him and I was like, let go, stand, goom. And I remember telling Sergeant (b)(6) to tell him to stand, to let go.

And then he was like, I remember telling Major Paulus or Major (b)(6) that he's hooked. They were like get him up, and I was like he's holding on to the concertina wire. He was like -- and that was after the translations like to get him up. He was like -- I don't know who it was that said it, but it was like well, yank it off and grab it off. I can't remember the exact words. So I look, I grab one concertina with one and

and I grabbed his hand, and I did the same thing with the other one. But as I was pulling it off, I guess he was letting go because he didn't get cut.

Q. Okay. Did he -- did it seem like he was griping any of the razor or was he gripping in between the razors?

A. Most of the razors were probably bent, so I mean, you could get still grab it and not get cut because I guess he was holding on. But I remember when I was taking them off there, he just let go.

Q. Okay.

A. There was no friction or struggle.

Q. So you get his hand off the wire, what happens next?

A. I helped him out of the concertina wire and I moved him to the middle of the facility now.

Q. Okay. Was -- did his garments get cut? Caught on the wire?

A. They did. He was only wearing a robe.

Q. Okay. So how did you free the garment from the wire?

A. As he went in, I guess they ripped up. Some ripped, but as we took them off, and I moved him, it was just a big tear on the side and we were told to take that off because it was no good. We would give him some other type of clothing.

Q. So the way you described it he's sitting on the concertina wire, or sitting in the gap?

A. In the gap.

Q. So how are you getting him out of this?

A. Carefully. It was myself. After I released him from holding on to the concertina wire, his hands were just placed in front, and then he just dropped them, and I grabbed his shoulder and just carefully tried to take him out.

Q. So was he standing? I mean, did you lift him to stand?

A. He was right there in the gap. He could just walk out and get out carefully, and not get scratched up or anything like that.

Q. Okay.  
A. So when I helped him out with his shoulders and rolled him out, I just grabbed his shoulders again and put him in the middle.

Q. When you say you rolled him out --  
A. Yeah. I rolled him out because I didn't want -- he was kind of starting to -- like sweating, the feces was around the area, so I was trying to be careful because I didn't want to get anything on me.

Q. But when you say you rolled him, did you roll him the length of his body out or --  
A. Most of his -- his legs were out already. It was just, like, his buttocks and his back that was against the wall. As you can see -- there's a picture of the concertina wire. You would understand more, sir. I mean, you could see it.

Q. Okay.  
A. But I mean, his legs were out, it was just basically his back and his butt that was against the wall in that gap.

Q. Okay. So you pulled it out?  
A. Pulled him -- yeah. Pulled him out, rolled him out.

Q. Okay. All right. So you pulled him out. Now what's (b)(6) doing?  
A. Now, (b)(6) on the floor, and again, he's saying something. He's just talking Arabic, but as I took him out he was on his back and I just once again put him in the middle to get him away from the concertina wire.

Q. Okay. He still has his clothes on at this time?  
A. Yes, sir.

Q. Now, you're the only person that at this point that's moving (b)(6) around?  
A. Yes, sir.

Q. Who else is in the room?  
A. Lance corporal (b)(6)

Q. And who else?  
A. Sergeant (b)(6) Major Paulus, Major (b)(6) that's all I can remember, sir.

Q. Did you ever wonder why you were the only person that's moving this guy around and nobody else came to help you?

A. Well, I mean, like I said, it wasn't something that was just planned, Lance Corporal (b)(6) attempted to help me, but he -- you only need one person to move somebody. I guess that's what it was.

Q. All right. So you got (b)(6) once again on his back in the center of the room. Right?

A. Yes, sir.

Q. What happens now?

A. His clothes, he had that one big tear and it was torn from before, and it was really messy, I guess. I mean, it was like he was half naked any way. So we were told to take off the garment and burn it. And we would get him something else.

Q. Who told you that?

A. I can't remember if it was major Paulus or Major Froiter. It was -- I know I was given the order though.

Q. Okay. So what happened?

A. He took off his clothes. He was trying to be careful so we ripped up the top, and we took it off over him. Then we pulled it off. And as we were doing that, the feces and the sweat, because like I said, it was really hot up there, and he was like all clammed up. He had, like, diarrhea on his chest. I know he had it on his hands, I remember that.

Q. Were you sweating as well at this point?

A. Yes, sir.

Q. Okay. All right. So the clothes are taken off, what happens?

A. It was given to Lance Corporal (b)(6) to burn, and when he went to go burn it, the -- next, I was to get him out and to clean -- have a detainee come in and clean the puddle of diarrhea.

Q. Okay. So let's make sure I understand this. (b)(6) leaves with the clothes, and a detainee comes in to clean up to puddle?

A. No. The next step was to get him out because this puddle -- I guess you could say, what's the word I'm looking for. Like, I guess the dragging caused like a little, caused like markings on the floor.

Q. Okay.  
A. Like --

Q. Streaks of defecation?  
A. Yes, sir.

Q. All right. So there he is, (b)(6) takes the clothes to do whatever -- go burn them. You're in the room with (b)(6) and what happens at that time?  
A. Um, I was given the order to take him out, so a detainee could come in and clean the puddle.

Q. And who gave you that order?  
A. I believe it was Major Paulus.

Q. Okay. So what did you do?  
A. Well, I kind of hesitated because I saw he was covered in defecation, and I remember Major Paulus -- Major Paulus, he knew why I stopped and he was just like drag him out from his neck.

Q. Okay. So what did you do?  
A. I proceeded.

Q. And how did you do that?  
A. I placed one hand, my left hand under his head, and my right hand right by his chin.

Q. Okay. So under his chin or on top of his chin?  
A. On top of his chin.

Q. Okay. So if you could just show demonstrate.  
A. Right like this.

Q. So you cupped your chin with your right hand?  
A. My right hand, sir. But before that, we told---I remember telling Sergeant (b)(6) telling him to "Goom" to stand. To walk out. And I told Sergeant (b)(6) to tell him in Arabic and he was again mumbling in Arabic and I remember Sergeant (b)(6) shrugging his shoulders, and that's when Major Paulus was like, get him up, and then like --

Q. Now, did you actually say anything to Major Paulus at that time about -- did you ever ask him what he wanted you to do or an eye contact thing?  
A. What do you mean, sir?

Q. Well, you're describing how (b)(6) has defecation all over him, so now you're kind of hesitant from moving the guy because he's got the defecation on him. And Major Paulus said grab him and --

A. When he told me, I kind of looked. I stopped. Everything that was being said I would for him, and when he told me that, I kind of like hesitated. I guess he saw that.

Q. Okay. So you hesitated?

A. Because I didn't know where to grab him.

Q. Did you say anything to Major Paulus at that time?

A. No, sir.

Q. Okay. So you hesitated and he said, grab him by the neck.

A. Yes, sir. because I was trying I guess I didn't want to touch him because I didn't know how to take him.

CC[MR. HIGGINS]: Are you asking -- I've got lost here, if he hesitates before he told him take him by -- that he's told to remove him. He hesitates, and then he's told to take him by the neck? Or that he's told to take him by the neck and then --

TC: That's what I'm trying --

WIT: No. The whole thing was, he told me to get them out. That's when I told Sergeant Hennagin and told the prisoner to goom, and told Sergeant Hennagin to tell him in Arabic, and he was just mumbling in Arabic. So then, Major Paulus, I remember him saying, "Get him out," and that's when I stopped because I was thinking how I'm going to do this with this guy covered in feces. And that's when he said, just take him -- drag him out by the neck.

Q. Okay. When he said that, what did you think?

A. I just did it.

Q. Did you have any thoughts about -- at the time when someone's telling you to drag someone by the neck, did have have any thoughts about that?

A. No, sir.



Q. Okay. What was Major Paulus' demeanor when he said that?

A. Well, this is the thing that bothers me because I can't remember. I know it was from either Major Paulus or Major (b)(6) because my back, I was always doing something, and it's been a year even when I spoke to NCIS I just can't remember.

Q. Okay. Well, let's talk about the tone. So you remember the order, but you can't remember it being said?

A. Yes, sir.

Q. What's the tone when the order was being given? Do you know what I mean by that?

A. No, sir.

Q. Okay. What was the -- you know if you say something there's a certain inflection in your voice. If you're angry, you might yell --

A. No. It was just direct because his demeanor is always direct.

Q. And the tone. You don't know who is saying it, so you can't say what their demeanor is, but what's the tone when you're hearing this in your ears, these words come at you, grab him by the neck, what's the tone in the words?

A. I don't understand what you're saying, sir.

Q. How about the inflection? Was it him yelling at you?

A. No. He was just talking directly, sir.

Q. Okay. How close were those to two to you?

A. Probably within 5 to 8 feet.

Q. Okay.

A. Maybe more 10 feet.

Q. All right. So you described how you grabbed (b)(6) by the head and chin, so what did you do at that point?

A. Well, I was trying -- I was being real careful because I didn't want to hurt the man, and I remember I stopped --

Q. Okay. Well, let's talk about that for a minute. You said you didn't want to hurt the man?

A. I was trying to be careful, sir.

Q. Why was that going through your head?  
A. Because I mean, you carry someone, you could obviously could do some damage.

Q. If you're grabbing them by the head?  
A. Well, if you do it the wrong way, I guess, if you do it carelessly.

Q. So at this time when you started -- now, let's go forward. You cupped the chin, grab the head, what do you do?  
A. I just -- I started. I can remember keeping my elbows in and just moving my legs and I would stop. He would make a sound, like, you know when you work out, sir, and you hold your breathe to make that sound as you're pushing up?

Q. Sure.  
A. I don't know the words to say that, and then he would do that and then I would stop so he could regain his breath or whatever it was, and that happened. By the third time he was already out of there. He was outside.

Q. Where was his arms?  
A. His arms probably on the side or could have been on the stomach.

Q. How about his legs, were they straight out in front of him?  
A. I remember them being cramped, but for the most part they were straight.

Q. Was he providing you any assistance?  
A. I can't remember, sir.

Q. Okay. Was it pretty much dead weight?  
A. Something like, yes, sir.

Q. Did he try to brace your hands with his hands at all?  
A. No, sir.

Q. How far did you drag him that way?  
A. Anywhere from 20 feet, 20, 25.

Q. This was just you?  
A. Yes, sir, because (b)(6) was burning the clothes.

Q. And when this was all going on and you were doing this, what other Marines were present?

A. Well, Sergeant (b)(6) was across the room safeguarding the other prisoners. I remember seeing Staff Sergeant (b)(6)

Q. What's (b)(6) doing?

A. He's walking and he's by the hallway.

Q. Just standing there watching?

A. I believe so, yes, sir.

Q. Who else?

A. That's when (b)(6) comes back and he tries to assist me, but he doesn't. I guess he didn't realize it but he grabbed the ankles, there was just defecation, and just realized that he got it on him, so he was just trying to guard it.

Q. Okay. So there's (b)(6) and then who else?

A. They's it, sir.

Q. What were the two majors doing?

A. They stayed inside. I guess they were figuring out what to do next.

Q. Okay. Do you remember what happened with (b)(6)?

A. Tell you the truth, I don't remember seeing him there, sir.

Q. How about (b)(6)?

A. He was inside. I guess he was just safeguarding the other detainees, clean the area.

Q. Okay. All right. So when you say 20, 25 feet is that to get him out the door or --

A. Out the door.

Q. And then you drug him to where?

A. The outside cell. As soon as we got in the dirt I already had my left hand under his head, because there's a drop, so when it came to the drop, I put my left under his armpit and kind of dropped him. And once he was in the sun he just -- I had to open the gate and --

Q. Now, he's naked at this time. Right?

A. Yes, sir.

Q. What was the ground like that you were dragging him across?  
A. It was sandy.

Q. Sandy inside the building and out?  
A. Yes, sir.

Q. Sandy --  
A. We cleaned it, but sand was everywhere so it was just stood up again.

Q. Any gravel?  
A. Somewhat, yes, sir.

Q. How difficult was it to drag him like that?  
A. Because I guess the sweat, it wasn't -- like, it was a rough. I don't remember for me it wasn't no -- it wasn't like I was dragging him side to side, like, I stopped three times. And each time I stopped I told him to I would tell him to get up "Goom" all you have to do is walk or even Sergeant (b)(6) said. After he regained himself, he was talking in Arabic and would mumble something.

Q. After these three times that you stopped, did you have; to re-grip every time?  
A. I wouldn't say re-grip, I would just stop so he could, so he could regain his breath.

Q. Okay. Um, okay. So you have him in the outside pen, what happens then?  
A. After then, I guess when I grabbed him, I smelled feces on me and we had leather gloves issued, but they went right through. I remember after that when I was done, they had other detainees come out and clean him. Then, Major Paulus sent out for Doc (b)(6) to check his hands because when they grab the concertina wire they had to check him out I guess. I remember going to clean and Doc (b)(6) coming in, and if they -- I could show you. On the side we had like a cleaning booth. I was cleaning my hands and I remember seeing (b)(6) checking (b)(6).

Q. Now, you say you observed Major Paulus call for (b)(6), how was it that you observed him?  
A. Because he was inside I guess figuring out what to do. He was just inside and he came out. See, that's the thing, I don't know if it was Major Paulus or Major

Froiter. I know that they called for Doc (b)(6) I think it was -- it might have been (b)(6) Someone was told to sent off for Doc (b)(6)

Q. Okay.

A. And there usually was the majors giving the commands.

Q. Um, now, there at this facility, the detention facility, did you guys have any stretchers?

A. No, sir. We had cots.

Q. Okay. Now, when the corpsman would come, did they have stretchers with them?

A. No, sir.

Q. So the entire time you were at the detention facility, you never saw a stretcher?

A. No, sir.

Q. Okay. So (b)(6), he is out there. You saw Doc (b)(6) pass you, did you see actually see Doc (b)(6) do the --

A. I remember him doing like checking his pulse, like, his heart and the back, just with a stethoscope.

Q. What were your impressions at the time when you finished the whole dragging thing, with all your contacts you had with (b)(6) during that whole period of time, at the time you left him out there in the outside pen, what was your impression of (b)(6)

A. I thought he was just being -- at the time, I kind of knew why he was there. So I just figured he just really hated us and didn't want to be there. That's the impression because even if you give someone a command, in English or Arabic, at least give you some type of eye contact or something, or even say something like, I'm hurt or -- we had Sergeant (b)(6) there, so when he didn't respond to any of us, I figured he just wanted to exclude us or just didn't care.

When I left him there, I guess, I figured like, this guy is, wow, he's something. I didn't think he was sick or anything like that. I honestly thought he was just being -- it was his will. He wanted it his way. He didn't care about anything.

Q. Okay. Now, when (b)(6) left the defecation, was it like solid or was it runny?

A. It was diarrhea, sir. It was both, I mean, it was hard

to tell because it was on his body because you could see some. You could see actually the feces, but then you see liquid.

Q. All right. So you get him in the outside pen, you saw Doc (b)(6) do something with him, and then what's the next observation that you had with him?

A. The next observation, I remember cleaning my hands, and I guess that's when everything started.

CC[MR. HIGGINS]: Vague.

WIT: When everything started with this protest because right after that, it was just like, all right. I guess -- it started right after that. I think -- after I cleaned my hands, I went to continue my shift and I guess there were still cleaning him or something like that in the process of, the (b)(6) we called them, they were bathing him. And I remember, I just remember starting my shift. Everyone left and that's when someone came back and said there's a protest, suit up, and that's when everything started from there. Not far from when everyone left I started.

Q. Now, did you see (b)(6) at any time from that period of time until he was found later deceased?

A. Well, after -- after everyone left, within 20 minutes there was like a protest. It was just like he's out there, I guess we were going to get some clothes for him or something like that. I remember one after the other, just being -- there's a protest, suit up. You know; there was people that stayed back and went into the other room, we suited up and then it was like we were given positions. And they would leave and then they returned and we switched with the people that stayed back, and they got word and they suited up.

Q. But again, focussing on (b)(6), after your dealing with him, after you saw (b)(6) check him out, did you see

A. (b)(6) again until after he was reported deceased? Yes, sir, because it was still my shift. When everything was done, it was like 1700.

Q. So what was (b)(6) doing during that time?

A. I remember him just -- he had one leg up. He was on his side. I remember him just rolling to his back and talking again in Arabic.

Q. This was outside?  
A. Yes, sir.

Q. And was he naked at the time?  
A. Yes, sir.

Q. What was the temperature during this period of time?  
A. Around 5 or 6 o'clock the sun was already starting to set. You could tell it was like, you could see the sun going down on our side, it was -- it's warm throughout the whole day at that time. But once the sun sets, you have that breeze that comes through. But I know I remember seeing the sun, it was starting to go down.

Q. This is when we came back from your standing guard.  
Correct?  
A. What do you mean by that, sir?

Q. You said you had to put on all your gear because of the --  
A. That was before. Right after. Then, after that, like after everyone had left, after this whole thing was over and he was out there, within 30 minutes, we were told to suit up one after the other.

Q. Okay.  
A. And remember we had cleaned -- the (b)(6) was already inside the room where (b)(6) was. He was already in there. And I remember just escorting him to our room. We got the word, Kevlar and flak jackets, and we were in Condition 3 I guess.

Q. Okay. How long were you still on your shift from the time you stood down from these protestors and still had the opportunity to observe (b)(6) --  
A. About an hour, hour and a half.

Q. So you still had an hour and a half observation of Mr. (b)(6) before your shift ended?  
A. Yes, sir.

Q. And during your hour and a half, was it dark outside or was it --  
A. Yeah. It was already 7:30. It was not dark, but the sun was down. It was still light out.

Q. Okay. Up until that point in time, the temperature was what?

A. The sun is not out, so I mean it's dry heat.

Q. Did you see during this time (b)(6) drinking anything or eating anything?

A. I remember after -- when the shift came, I remember telling (b)(6) give him a shirt, get him some water. We were told to leave him out there. Leave him out there and I guess when everything happened, we were going to give him a shirt. But when everything happened, it was just like, when we got back to our regular duty, we were just talking about it and I just remember seeing him. By the time we realized what was going on, it was time to change shifts. And I told Lance Corporal (b)(6) to go get him a shirt, or Corporal (b)(6) to get him a shirt from one of the prisoners because they had plenty of shirts. And if they didn't, just let me know and I would even get him a shirt.

Q. During the time you were there at the facility, how many detainees would be left like (b)(6) was left in the pen naked?

A. None.

Q. So he was the first?

A. Yes, sir.

Q. And the only?

A. Yes, sir.

Q. Now, up until this point, what, if any significance did you believe (b)(6) had as a prisoner?

TC: Sir, I'm sorry to interrupt. Do you think we can take a brief recess.



DO: I was just looking for a point to take a break so why don't we just go ahead and break now. Now off the record.

*The deposition went off the record.*

DO: Back on the record. The time is 1024.

*Questions by the prosecution:*

Q. Where we left off was my question of when (b)(6) was a prisoner at the detention facility at Camp Whitehorse, were you aware of any special significance that he had? Meaning, that he was suspected to be involved with anything?

A. At first, sir, no. But through scuttlebutt you find by the second or third day.

Q. What did you find out through scuttlebutt?

A. That he had something to do with Jessica Lynch. That he was caught selling M16's from the Jessica Lynch convoy.

Q. Okay.

A. That he had something to do with it.

Q. Okay. Now, had you heard that scuttlebutt by the time of the dragging incident?

A. Before.

Q. Before?

A. Yes, sir.

Q. So you knew that by that time?

A. Yes, sir.

Q. All right. I just got one more area for you of questioning, and it's regarding on your interview by NCIS?

A. Yes, sir.

Q. You were interviewed by Agents (b)(6)

A. I remember (b)(6) is that retired gunny, sir.

Q. Correct?

A. Yes, sir.

Q. And they were both there?

A. Yes, sir.

Q. During that time, they asked you to do a demonstration of the technique you used for moving (b)(6) is that correct?

A. Yes, sir.

Q. Please tell us how that went?

A. Well, the gunny, he laid on the his back and I showed him -- I cupped -- same thing. I put my left hand under his head and my right hand by his chin. Like I cupped it and then I didn't drag him, I just showed him that way how I did it.

Q. Did he have you -- so he didn't have you drag him any distance at all?

A. No, sir.

Q. Well, you were demonstrating, do you recall if they had you stop in any way what you were doing because Gunny (b)(6) was having any difficulty breathing?

A. No, sir. I didn't pull him. I just showed him how I held him.

Q. Okay. Now, also in the interview you gave a sworn statement. Right?

A. Yes, sir.

Q. And the sworn statement, you spoke about how on one occasion when you were dealing with (b)(6) you had to strike him in the stomach with your fist once.

Do you recall that?

A. Yes, sir.

Q. Do you actually recall that occurring?

A. When I was -- during the interview with NCIS, I told him exactly what I did, and he used the word "strike". I told him that I pushed him with my hand and he tilted over.

Q. Okay. Let's talk about the stomach thing?

A. Okay, sir.

Q. What were you trying to convey? That they -- the NCIS agents typed the statement for you. Right?

A. Yes, sir.

Q. Okay. What were you trying to convey to them that that ended up in the statement?

A. When I told them what happened, they got so detailed into -- when I said I nudged him, they got so detailed into how I nudged him. Was it like a soccer ball pass, and I told them, just for an example, not to get off that, but when I said I nudged him, he said like kicked. I said I nudged him. He was like, well, how did you nudge him? I was like the side of my foot, it was like a kick. And we made an assumption that we trusted the agent and we had nothing to worry about. Just tell the truth, basic procedure. So I kind of agreed with everything he kind of said on that basis and that is what happened. So going back to that, I remember I told him, like, I showed him. He was like how did you hit him? I was like well, with my hand. Did you -- was it a fist? I was like no, it was with the side of my hand. The open palm.

Q. Okay.

A. And it was like, I just pushed him.

Q. In the stomach?

A. Well, on the side. I just pushed him to get up and he tilted over.

Q. Now, was he -- at what point during the whole you dealing with (b)(6) did that occur?

A. He was sitting down Indian style facing the wall.

Q. Okay. So when it says here in the statement that you hit him -- or it says, "I struck him in the stomach with my fist once," what were you trying to convey to the NCIS agents?

A. What do you mean, sir.

Q. Well, what's that talking about when I said I struck him in the stomach area with my fist once?

A. That's the thing. He's saying fist, and even when I told him I didn't hit him with my fist. When he wrote it, I guess I was just agreeing with everything he was saying, but I was trying to get him up to listen to my commands and that's that.

Q. Okay. But did you hit him, push him, or anything in the stomach area?

A. Yeah. I pushed him.

- Q. At what point during your dealings with (b)(6) did you push him in the stomach?
- A. When he was sitting Indian style and I told him to get up, and he wouldn't listen. When I gave him the command he just, he wasn't paying attention to me. I pushed him with my hand. So like he could give me some type of attention, and I just grabbed him up.
- Q. Basically, what I'm looking for is the sequence. When in the whole, from the time you walked in there and saw (b)(6) wearing the defecation, ended the --
- A. Before he went in he dove into the concertina wire. When I pulled him from one side to the other side of the room, away from the puddle and I had him sitting Indian style before I had him stood up, that's when.
- Q. When that occurred, you say you pushed him in the stomach, was it directly in the middle of the stomach, or were you hitting any bones?
- A. He was a big fellow so I remember I was on the side and I was trying to get him to come up. Yes, in the process of trying to get him to stand up, I kind of pushed him to the side.

TC: Okay. That's all the questions I have?

CC[MR. HIGGINS]: We don't have any questions.

#### CROSS-EXAMINATION

*Questions by the defense (Capt Folk):*

- Q. Lance Corporal (b)(6) a couple of questions that don't have anything to do with anything in Iraq, but as to your present and status as to the Marine Corps. You're currently a reservist?
- A. Right now I'm on ADSW Unit.
- Q. What does that mean?
- A. Additional duty special work.
- Q. Are you -- how long is your status going to last?
- A. Probably for like a month and a half.
- Q. And at that point, do you go back to the reserves?
- A. I'll go back to the reserves.

Q. At this time, as you sit here today, do you have any knowledge of a pending deployment or anything that's going take you out of the continental United States as a result of the Marine Corps?

A. I might be going to Japan.

Q. When is that scheduled?

A. July 2nd, 3rd, it's like three weeks.

Q. Let's talk about the month of August. Based on everything you know right now, do you have any knowledge that you will be out of the country in August?

A. No, sir.

Q. Your home of record is in (b)(6)

A. In (b)(6)

Q. To the best of your knowledge, you'll be in New York city some time in August?

A. Yes, sir.

Q. You'll be available to testify in a court-martial if you're called as a witness in August?

A. Yes, sir.

Q. So you don't have anything that's going make you unavailable to testify at the court-martial?

A. No, sir.

Q. Based on what Lance Corporal (b)(6) just proffered, I would add an objection to the admissibility of any of your testimony from today's deposition at Sergeant Pittman's court-martial based on the fact that it's clear Lance Corporal (b)(6) doesn't meet the exceptional circumstances under 102a that are required to take a deposition. I would object to the deposition on that basis and object to using his testimony at that court-martial on that basis.

Let me draw your attention now to this situation that's taking place in that holding cell facility at Camp Whitehorse during this whole defecation/moving

(b)(6) I want you to describe for me in your own words how (b)(6) went from whatever position he was in, into that cross-legged Indian seated position, how that happened. I want that to be very specific?

A. Well, sir, when I pulled him from the puddle to that side of the wall, he had his robe on. So my hands were

around his shoulders and under the arm pit. I know grabbed him, and that's what helped me take him from one end to the other. As I turned him, I guess one leg was already there by his shin, and putting it there. It wasn't like a perfect Indian style where it was just enough.

Q. Did he maintain that position for some period of time?  
A. Yes, sir.

Q. And you didn't have to steady hold him up or anything?  
A. No, sir.

Q. By his own power?  
A. Yes, sir.

Q. And again, just so I'm clear, during this whole period of time when you were in this holding facility with (b)(6) and he was covered in defecation, you never observed any problems that (b)(6) was having breathing. Correct?  
A. Yes, sir.

Q. Did you ever notice anything besides the defecation that in your opinion would indicate he was in physical pain?  
A. No, sir.

Q. My understanding based on your explanation of what was going on is that during this whole period of time when he was in that holding cell covered in the defecation, you would have been the closest person to (b)(6) during that entire period of time?  
A. Yes, sir.

Q. Nobody else had a closer view of (b)(6) or what he was doing than you. Correct?  
A. Yes, sir.

Q. And to the best of your recollection, throughout this period of time, when you were observing (b)(6) what was the average distance you had from him? Maybe I can lead you through it. Were you pretty much within an arm's length with him the whole time?  
A. Pretty much, yes, sir.

Q. So if you weren't exactly hands on with (b)(6) you were in arm's length?  
A. Yes, sir.

Q. Now, you described moving (b)(6) on a couple of different occasions. First time you described moving --you stated that you moved him out of this puddle of defecation to a another position in the cell. Correct?

A. Yes, sir.

Q. And during that movement, you were pulling him or dragging him across the floor of this cell?

A. Yes, sir.

Q. And you described it as being sandy and it was a concrete floor covered in sand?

A. Yes, sir.

Q. What was the distance from that first movement from the puddle of defecation?

A. It was 5 to 8 feet.

Q. How long would you estimate that took you to move him that distance?

A. Not long. A couple of seconds, sir.

Q. Were you able to observe whether his skin was dragging on the ground during this period of time or do you remember that?

A. No, sir. He had his robe on.

Q. And at that point, he assumed this cross-legged Indian style seating that you described?

A. Well, at first, as I moved him to the side wall I had he was already seated. He was just seated with his leg forward in front of him. Then I was told to have him face the wall, I just tilted my shoulders and when I just crossed him, I remember moving one leg and putting it cross -- Indian style from there.

Q. And it was at that time -- or following that time that (b)(6) after you stood him up, he fell into the wire or dove into it?

A. After I set him up, he stood on his own. As I was walking away, I noticed that through peripheral vision that he was going forward, that's when I turned my head and I saw him falling.

Q. When you say he stood up on his own, you're saying he was using his own power to stand up?

A. Yes, sir.

Q. Is it your memory that he fell into the concertina wire just that one occasion or more than one occasion?  
A. Just that one occasion, sir.

Q. And when you removed (b)(6) from the cell, by holding him with your hand under the chin and a hand on the head, that you described, it was at that time that he was naked. Correct?  
A. Yes, sir.

Q. And at that point, as you carried him out of room, you pulled him out of the, that would have been bare skin on the floor, bearskin on the floor. Correct?  
A. Yes, sir.

Q. How long would you estimate that you were able to observe (b)(6) naked during this whole dragging incident and once he got out to rec yard, how long would you say you had eyes on him?  
A. The whole --

Q. The whole time in which he wasn't clothed?  
A. During my shift?

Q. Specifically, I want you to focus on this period of time when you removed him from the cell and took him out to the yard. How long would you say you were with him during that period of time?  
A. It was a good 10 minutes, 15 minutes.

Q. Do you think you had a pretty good opportunity to observe his body and physical appearance at that point in time?  
A. Yes, sir.

Q. Anything obstructing your view of him?  
A. I really wasn't concentrating on him. I was just concentrating on the situation.

Q. Doing your job. Did you have a chance to look at his body during that 10 minutes?  
A. No, sir.

Q. Did you notice anything that would have caught your attention in terms of wound to his body?  
A. No, sir.



Q. Didn't see any cuts? Significant cuts?  
A. He was cover in sweat and feces and sand.

Q. You didn't observe any bleeding though?  
A. No, sir.

Q. You didn't observe any bruises that you remember?  
A. No, sir.

Q. Lastly, what I want to cover with you Lance Corporal (b)(6) is the sworn statement you made to NCIS. He had to walk you through it a little bit. In that statement, though, you recall saying that kicked (b)(6) three times. And you testimony is that's not an accurate description of what actually happened. Right?  
A. Yes, sir.

Q. And the reason that your sworn statement is incorrect, in that regard is that this NCIS Agent (b)(6)  
A. I know Agent (b)(6)

Q. That was his word kick?  
A. Yes, sir.

Q. You agreed to that word in your statement because you wanted to cooperate with this individual?  
A. Yes, sir.

Me he made this feel comfortable, and I guess we were there just to tell the truth then.

Q. Did you understand you had the option to line-out things that were inaccurate?  
A. When he did that, I thought he meant grammar wise because I corrected things, like, the words A T for hat, and that was not spelled right, I did that. A couple corrections like that.

Q. In your opinion, was it clear to you could make substantial changes?  
A. No. That wasn't clear to me. I thought that it was more grammar.

Q. He never gave you an example that if it was a word that you didn't agree with that you could change that?  
A. I don't remember that, but no. I remember it was basically more on side of grammar-wise.

Q. And same situation where he used the word that wasn't accurate or would pertain to punch versus push?

A. That's correct.

Q. Was your experience working as a guard at Camp Whitehorse that if one of the detainees was having some kind of medical condition, that they would make Marines aware of a medical condition. Say, for instance, you had a detainee that was sick or was hurt, with your experience that the other detainees might say this particular guy needs to see a doctor?

A. I don't remember any instances like that, where they would let us know. If we would find out, I would have called BAS, and if it was serious, we'd just take them to the hospital.

Q. Did you have an Iraqi detainee come to you and say I or one of those other individuals --

A. Yes, sir.

Q. So that wasn't uncommon.

A. Wasn't highly uncommon.

Q. Did any of the other detainees do that with regard to (b)(6) at any point?

A. No, sir.

Q. Did any of the -- did (b)(6) go to you personally during the time you were on post?

A. No, sir.

Q. Say he needed medical attention?

A. No, sir.

Q. If I could just have one moment, sir.

You said that Sergeant (b)(6) was a member of your team?

A. Yes, sir.

Q. During Major Francis's questions, you made some comments about seeing Sergeant (b)(6) in the room, in the holding cell during this period of time with (b)(6).

A. He was in the room? No. He was in the other room.

Q. Which room -- what are you referring to?

A. Where all the detainees were. Where we held the detainees, the EPW's, and everyone was put in one room

for the -- the other room was supposed to be empty, I guess for that high profile prisoner. And he was in that room. Sergeant (b)(6) was in that room where the other detainees were.

Q. He was on post at that time?

A. Yes, sir.

Q. Just doing the other side of the building?

A. Yes, sir.

DC[CAPT FOLK]: I don't have any other questions.

*CROSS-EXAMINATION*

*Questions by the civilian counsel (Mr. Higgins):*

Q. Are you available to testify at a court-martial in September?

A. Yes, sir.

Q. I would join Captain Folk's motion at the extent that he made at the beginning of the deposition?

DO: The objection?

CC[MR. HIGGINS]: The objection. Just to make sure it's completely covered.

DO: Let's go off the record just for a second.

*The deposition went off the record.*

DO: We're back on the record at 1050.

Any additional questions?

TC: No, sir.

CC[MR. HIGGINS]: No, sir.

DC[CAPT FOLK]: No, sir.

DO: I guess this deposition of Lance Corporal (b)(6) is concluded.

*The deposition concluded.*

**AUTHENTICATION OF DEPOSITION**

in the case of

Major C. A. Paulus and Sergeant G. P. Pittman, U.S.  
Marine Corps, 2d Battalion, 25th Marines, Reserve Unit, Garden  
Grove, New York.

Pursuant to R.C.M. 1104(a)(2)(B), the deposition in the foregoing  
case is authenticated by the trial counsel due to the deposition  
officer's return to reserve status.

\_\_\_\_\_  
L. J. FRANCIS  
Major, U.S. Marine Corps Reserve  
Trial Counsel  
  
\_\_\_\_\_



UNITED STATES MARINE CORPS  
MARINE CORPS BASE  
BOX 555010  
CAMP PENDLETON, CALIFORNIA 92055-5010

IN REPLY REFER TO:  
5800  
SJA  
14 MAY 2004

From: Commander  
To: Colonel D. L. Applegate (b)(6)

Subj: ORDER FOR ORAL DEPOSITIONS ICO UNITED STATES V. MAJOR CLARKE A. PAULUS  
(b)(6) USMC AND UNITED STATES V. SERGEANT GARY P. PITTMAN  
USMCR

Ref: (a) RCM 702, MCM (2002 Ed.)

1. Per the reference, you are hereby appointed as the deposition officer in the subject cases. The Marines to be deposed are as follows:

a. Staff Sergeant (b)(6) USMCR attached to 2d Battalion, 25th Marines, (b)(6)

b. Sergeant (b)(6)  
(b)(6)

c. Corporal (b)(6)  
(b)(6)

d. Lance Corporal (b)(6)  
(b)(6)

e. Lance Corporal (b)(6) USMCR attached to 2d Battalion, 25th Marines, (b)(6)

f. Lance Corporal (b)(6)  
(b)(6)

g. Lance Corporal (b)(6) USMCR attached to 2d Battalion, 25th Marines, (b)(6)

h. Lance Corporal (b)(6) USMCR attached to 2d Battalion, 25th Marines, (b)(6)

i. Lance Corporal (b)(6) USMCR attached to 2d Battalion, 25th Marines, (b)(6)

j. Lance Corporal (b)(6) USMCR attached to 2d Battalion, 25th Marines, (b)(6)

k. Lance Corporal (b)(6) USMCR attached to 2d Battalion, 25th Marines, (b)(6)  
and,

DEPT EXHIBIT 1  
PITTMAN PROSECUTION XXVI  
PAGE 56 of 64

Subj: ORDER FOR ORAL DEPOSITIONS ICO UNITED STATES V. MAJOR CLARKE A. PAULUS  
(b)(6) USMC AND UNITED STATES V. SERGEANT GARY P. PITTMAN  
USMCR

1. Lance Corporal (b)(6) USMCR attached to 2d  
Battalion, 25th Marines, (b)(6)

2. This action is necessary because these Marines may become material witnesses in the subject cases and their testimony preserved should it become necessary. These depositions should be completed no later than 10 June 2004. If additional time is necessary, submit a written request for an extension. The depositions will be recorded by a court reporter for further use in court-martial proceedings.

3. By copy hereof, trial and defense counsel currently detailed in the subject cases will remain detailed for the oral depositions.

*M. L. Hampton*  
M. L. HAMPTON

Copy to:  
TC (Maj Francis)  
DC (Capt Jasper/Capt Folk)  
SJA, 1stMarDiv (Rear)



UNITED STATES MARINE CORPS  
MARINE CORPS BASE  
BOX 555010  
CAMP PENDLETON, CALIFORNIA 92055-5010

IN REPLY REFER TO:  
5800  
SJA

11 MAY 2004

From: Commanding General  
To: Colonel D. L. Applegate (b)(6) USMCR

Subj: ORDER FOR ORAL DEPOSITIONS ICO UNITED STATES V. MAJOR CLARKE A. PAULUS  
(b)(6) USMC AND UNITED STATES V. SERGEANT GARY P. PITTMAN  
(b)(6) USMCR

Ref: (a) RCM 702, MCM (2002 Ed.)

1. Per the reference, you are hereby appointed as the deposition officer in the subject cases. The Marines to be deposited are as follows:

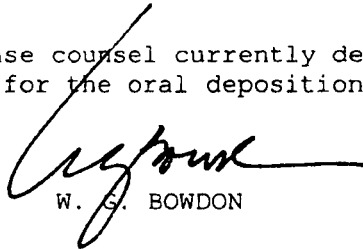
- a. Major (b)(6) USMCR attached to 2d Battalion, 25th Marines, (b)(6)
- b. Sergeant (b)(6) USMCR residing at (b)(6) (b)(6)
- c. Sergeant (b)(6) USMCR attached to 2d Battalion, 25th Marines, (b)(6)
- d. Hospitalman Second-Class (b)(6) USNR residing at (b)(6)
- e. Lance Corporal (b)(6) USMCR attached to 2d Battalion, 25th Marines, (b)(6)
- f. Lance Corporal (b)(6) USMCR attached to 2d Battalion, 25th Marines, (b)(6)
- g. Lance Corporal (b)(6) USMCR attached to 2d Battalion, 25th Marines, (b)(6)
- h. Lance Corporal (b)(6) USMCR attached to 2d Battalion, 25th Marines, (b)(6)
- i. Lance Corporal (b)(6) USMCR attached to 2d Battalion, 25th Marines, (b)(6)
- j. Lance Corporal (b)(6) USMCR attached to 2d Battalion, 25th Marines, (b)(6)

2. This action is necessary because these Marines and one Sailor may become material witnesses in the subject cases and their testimony preserved should it become necessary. These depositions should be completed no later than 10

Subj: ORDER FOR ORAL DEPOSITIONS ICO UNITED STATES V. MAJOR CLARKE A. PAULUS  
(b)(6) USMC AND UNITED STATES V. SERGEANT GARY P. PITTMAN  
USMCR

June 2004. If additional time is necessary, submit a written request for an extension. The depositions will be recorded by a court reporter for further use in court-martial proceedings.

3. By copy hereof, trial and defense counsel currently detailed in the subject cases will remain detailed for the oral depositions.

  
W. S. BOWDON

Copy to:  
TC (Maj Francis)  
DC (Capt Jasper/Capt Folk)  
SJA, 1stMarDiv (Rear)



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AE XXVI pgs 60-61 Removed under (b)(6)

UNITED STATES MARINE CORPS  
MARINE CORPS BASE  
BOX 555010  
CAMP PENDLETON, CALIFORNIA 92055-5010

IN THE MATTER OF )  
 )  
UNITED STATES )  
 )  
v. ) ORDER TO TESTIFY  
 )  
PAULUS. CLARKE A. )  
 )  
(b)(6) )  
Major )  
USMC )

To: Lance Corporal (b)(6) USMCR

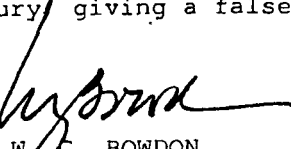
1. As an officer empowered to convene general courts-martial and pursuant to Rule for Courts-Martial (RCM) 704, I hereby make the following findings:

a. That Lance Corporal (b)(6) USMCR, possesses information relevant to the pending trial by general court-martial of Major Clarke A. Paulus, USMC, and that the presentation of his testimony at this trial is necessary to the public interest; and

b. That it is likely that Lance Corporal (b)(6) USMCR, would refuse to testify on the basis of his privilege against self-incrimination if subpoenaed to appear as a witness.

2. On the basis of these facts, I hereby order Lance Corporal (b)(6) USMCR, to appear and testify before the general court-martial convened for the trial of Major Clarke A. Paulus, USMC. In accordance with RCM 704, no testimony or other information given by Lance Corporal (b)(6) USMCR, (or any information directly or indirectly derived from such testimony or other information) can be used against him in any criminal case, except a prosecution for perjury giving a false statement, or otherwise failing to comply.

Dated: 11 MAY 2004

  
W. G. BOWDON  
Major General  
U.S. Marine Corps  
Commanding

DEPT EXHIBIT 5  
APPELLATE EXHIBIT XXVI  
PAGE 62 of 64

UNITED STATES MARINE CORPS  
MARINE CORPS BASE  
BOX 555010  
CAMP PENDLETON, CALIFORNIA 92055-5010

IN THE MATTER OF )  
 )  
UNITED STATES )  
 )  
v. )  
 ) GRANT OF TESTIMONIAL IMMUNITY  
PAULUS, CLARKE A. )  
(b)(6) )  
Major )  
USMC )

To: Lance Corporal (b)(6) USMCR

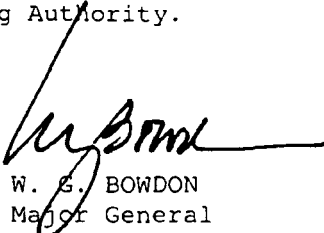
1. It appears that you are a material witness for the Government in the case of United States v. Major Clarke A. Paulus, USMC, for the following alleged violations of the Uniform Code of Military Justice, to wit: Article 92, willful dereliction of duty; Article 93, cruelty and maltreatment; and Article 128, assault.

2. In consideration of your testimony as a witness in the matters described in paragraph (1), you are hereby granted immunity from the use of your testimony or other information given by you (including any evidence directly or indirectly derived from your testimony or from other information you provide) against you in a criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with an order to testify in this matter.

3. It is understood that this grant of immunity from the use of your testimony or other information given by you (including any evidence directly or indirectly derived from such testimony or other information you provide) against you in any criminal case is effective only upon the condition that you testify under oath as a witness in the matters described in paragraph (1).

4. This grant of testimonial immunity is made under the authority granted me under Rule for Courts-Martial 704, Manual for Courts-Martial, 2002 Edition, as a General Court-Martial Convening Authority.

Dated: 11 MAY 2004

  
W. G. BOWDON  
Major General  
U.S. Marine Corps  
Commanding

DEPT. EXHIBIT 6  
APPELLATE EXHIBIT XXV

PAGE 63 OF 64

UNITED STATES MARINE CORPS  
Marine Corps Base  
Box 555023  
Camp Pendleton, California 92055-5023

28 MAY 2004

GRANT OF TESTIMONIAL IMMUNITY )  
IN THE MATTER OF )  
UNITED STATES )

v. )

C. A. PAULUS )

(b)(6) )

Major )

U.S. Marine Corps )

GRANT OF TESTIMONIAL  
IMMUNITY AND ORDER TO  
TESTIFY

\*\*\*\*\*

To: Lance Corporal (b)(6), U.S. Marine  
Corps Reserve:

1. It appears that you are a material witness for the government concerning alleged violations of the Uniform Code of Military Justice by Major C.A. Paulus, U.S. Marine Corps, specifically: Article 92, willful dereliction of duty; Article 93, cruelty and maltreatment; and Article 128, assault. It also appears that it is in the public interest to obtain any and all information you may have pertaining to this case in a deposition and that you would refuse to testify on the basis of your privilege against self-incrimination.

2. On the basis of these facts, I hereby order you to appear and testify at a deposition in the case of Major C.A. Paulus, U.S. Marine Corps. In consideration of your testimony as a witness in the matter described in paragraph (1), you are hereby granted immunity from the use of your testimony in these matters at any interview, deposition, trial or other information given by you (or any other information directly or indirectly derived from such testimony or other information you provide) against you in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with this order to testify in this matter.

3. It is understood that this grant of immunity from the use of your testimony or other information given by you (including any evidence directly or indirectly derived from your testimony or from the other information you provide) against you in any criminal case is effective only upon the condition that you testify under oath as a witness in the matter described in paragraph (1) and (2).

4. This grant of immunity is made under the authority granted me under Rule for Courts-Martial 704, Manual for Courts-Martial, 2002, as a General Courts-Martial Convening Authority.

*M. L. Hampton*

M. L. HAMPTON

Colonel, U.S. Marine Corps  
Commander

Copy to:  
DC  
TC

DEPO EXHIBIT 7

APPELLATE EXHIBIT xxv

6000 6000



DO: Let's go back on the record.

We're ready to proceed, so I'm going to ask that all parties stipulate and agree that we waive the reading of the appointment order, qualifications of counsel, accused's rights, and the description of the nature of deposition of court-martial proceedings.

All agreed?

An affirmative from all counsel.

DO: Government, proceed.

(b)(6) a civilian, was called as a witness by the prosecution, was sworn, and testified as follows:

*DIRECT EXAMINATION*

*Questions by the prosecution:*

Q. Please state your full name.

A. (b)(6)

Q. Spell the last.

A. (b)(6)

Q. Okay. And are you currently a lance corporal?

A. No. I'm not.

Q. Okay. So you're completely off active duty at this time?

A. Yes.

Q. Because at the last time we spoke at the Article 32, you were on the IRR. Correct?

A. I contract ended last month.

Q. If you could, tell your current home of record and address.

A. (b)(6)

Q. (b)(6)

A. Yes, sir.

Q. And what's your current phone number?

A. (b)(6)

DO: Just by way of clarification, have you been dropped to the IRR from SMCI unit when you say you contact ended? Do you know? Let me ask this, when did you enlist?

WIT: 1996, sir.

DO: Okay. Thanks major, and this is a technicality -- you don't have any current obligations in the IRR, but you probably have an additional obligation period in the IRR. You don't have to drill, you don't have to report, but you're still subject to the orders from the Marine Corps. It's happened before, it's probably not going to happen to you because you've deployed --

WIT: I spoke with DEERS and they said that I'm not in the system anymore.

DO: When you're in the IRR, as far as with DEERS, you're not going to be in the DEER's system, but you still have an obligation in case you're called up. It's a technicality and I just wanted to clear that up.

*Questions by the prosecution:*

Q. With that being the case, to be safe rather than sorry, the last time we spoke at the Article 32 hearing, the investigating officer instructed me to read you your Article 31(b) rights.

Do you remember that?

A. Yes, sir.

Q. And I read you those rights at the time, and you invoked those rights and chose not to testify. Correct?

A. Correct?

Q. Do you recall what those rights were that I read you?

A. Not really. That I can talk if I want to.

Q. Well, basically, your rights are, going back here, but I believe I told you you were suspected of the offense of dereliction of duty, and you had the right to remain silent. Anything that you should say could be used against you in a court of law. You had the right to speak to an attorney if you wanted to before being questioned. And you have the right to speak or not say nothing at all, if that's what you wanted to do.

So that being the case, at this time, do you want to invoke your Article 31(b) rights or would you like to speak to us?

A. I talk.

Q. Does that satisfy everyone here?

CC[MR. HIGGINS]: I just ask if he has counsel.

TC: Do you have an attorney that's representing you at this time?

WIT: No.

DO: And just to be perfectly clear, if you wanted to talk to counsel, you'd still be entitled to have one appointed and provided for you at no charge.

WIT: Yes, sir.

DO: All right.

*Questions by the prosecution:*

Q. All right. Now, your unit at one time was 2d Battalion, 25th Marines. Right?

A. Yes. That's correct.

Q. And you said you enlisted in the 1996?

A. November 1996.

Q. And what was the highest rank you achieved?

A. Lance corporal.

Q. You deployed in support of Operation Iraqi Freedom. Correct?

A. Correct.



Q. When did you get called up for that?  
A. It was March 8th, I believe it was, sir.

Q. Okay. Of 2003. Right?  
A. 2003.

Q. And what's your MOS?  
A. 3051, Supply Clerk.

Q. Now, prior to actually going to Iraq, you went to Camp Lejeune?  
A. Yes. We were there for about three weeks.

Q. When you were at Camp Lejeune, did you receive any training on Law of War or EPW handling?  
A. I guess we did.

Q. And what did you learn?  
A. The 5 S's, Segregation, Selection, Speed, and stuff like that.

Q. Okay. Did you ever learn anything about how you were supposed to treat the EPW's?  
A. No. The training lasted about four hours. As far as I can remember, it was just the 5 S's.

Q. Did they ever discuss whether EPW's could be hit or punched?  
A. No.

Q. Or kicked?  
A. No.

Q. Do you recall who gave that training?  
A. I don't recall.

Q. Do you recall if Major Paulus was involved with that training at all?  
A. I'm not sure who run it.

Q. Okay. All right. At some point, your were assigned to Camp Whitehorse detention facility. Correct?  
A. Yes, sir.

Q. When did that occur?  
A. I believe it was the first or second week in April.

Q. Okay. Now, at that time, the OIC was who?  
A. Major (b)(6)

Q. Who was the staff NCOIC?  
A. Staff NCO, Staff Sergeant (b)(6) I believe.

Q. And was there an NCOIC?  
A. No.

Q. Okay. At that time, was Sergeant Pittman working there?  
A. Yeah.

Q. And what was Sergeant Pittman's role there at the detention facility?  
A. Same role as everybody. Cover for the shifts, he was there, he was -- he would search the new-comers.

Q. Now, did Sergeant Pittman provide any instruction to the guards on how to deal with EPW's?  
A. No.

Q. All right. Let's talk about the time from the time you arrived at the Camp until 3 June 2003. All right? Just that period of time. All right?  
A. Yes.

Q. During that period of time, describe for me how EPW's were processed into the camp?  
A. They would come. They would get strip searched, see if any had any weapons or things like that. And they were conducted to a cell.

Q. Well, during this initial in-processing of prisoners, was there ever an occasion where you saw a Marine punch or kick an EPW?  
A. No.

Q. Okay. For any reason whatsoever?  
A. No.

Q. Now, after the in-processing, you said they went into a cell, what was going on when they went into the cell?  
A. Sometimes it's different. Sometimes we were told to be handcuffed until they talked to the HET Team. Sometimes they would just put them on the cell without any restraintment, without any handcuffs.

Q. And what was the purpose of the handcuffs, waiting to speak to the HET Team?  
A. We were instructed do it because they weren't going to be conducted from the cell to another location until they talked to them.

Q. Well, what were the prisoners doing, what were the handcuffed prisoners doing?  
A. Lie on the floor or sit down.

Q. Were they ever required to stand up at all?  
A. Sometimes.

Q. And the purpose of that?  
A. I don't know. I guess to make interrogation easier.

Q. How would making them stand up make it easier?  
A. The more tired they are, the more likely they are going to talk.

Q. Well, who told you to employ that technique?  
A. As far as I remember, the order came from HET Team.

Q. But actually passed the word to you?  
A. I'm not quite sure. I believe it was Staff Sergeant (b)(6)

Q. And that's Staff Sergeant (b)(6)  
A. Again, I'm not quite sure.

Q. Did you ever have any prisoners or did you ever observe any prisoners that wouldn't want to comply with the standing up?  
A. No.

Q. Okay. So all the prisoners would stand up and comply without resisting at all?  
A. Yes.

Q. All right. Any time prior to June 3, 2003, did you ever observe any guard punch or kick or hit a prisoner in any way?  
A. No. Not at all.

Q. Is that a no?  
A. No.

Q. Did you ever see Sergeant Pittman or Lance Corporal (b)(6) ever punch, kick, or hit an EPW in any way?

A. No.

Q. Who was on your shift?

A. It was Lance Corporal (b)(6) -- my shift changed. It first was Sergeant (b)(6) I believe. Then, it was Corporal (b)(6) and then the last month, it was changed to Corporal (b)(6).

Q. Okay. Who else was on your shift?

A. Corporal (b)(6) Lance Corporal (b)(6).

Q. Now, let's talk about after 3 June. Between 3 June and 6 June 2003. All right?

A. Okay.

Q. On 3 June, you received a prisoner by the name of (b)(6)?

A. Yeah.

Q. Okay. Can you recall anything regarding his in-processing?

A. I don't. Actually, I'm not sure when or what time he came in.

Q. Okay. When was the first time you can recall seeing him?

A. I believe it was the same down when I went to my shift. I think he was, I think he was on the left cell, segregated by the other two POW's.

Q. What do you mean by two other POW's?

A. There was two other persons in the same cell, but divided by the wire.

Q. What time of the day was this?

A. It was about 2000.

Q. Okay.

A. Whenever my shift started.

Q. And what was (b)(6) doing?

A. He was standing with handcuffed with a sandbag on his head.

Q. And was this during the standing-up phase?

A. Yes.

Q. Who was on shift with you at this time?  
A. Lance Corporal (b)(6) and Corporal (b)(6)

Q. Now, how -- what was the period of time you observed Mr. (b)(6) on that shift?  
A. Well, on my shift.

Q. And that was for how long?  
A. Four hours.

Q. What was he doing during those four hours?  
A. He was standing up and he was sitting and he was standing and sitting.

Q. Was he complying with your request to stand and sit?  
A. Yes.

Q. Did it appear he was having any physical difficulty at this time.  
A. No. I remember saying something, words in Arabic, but I didn't understand what he was saying, and he would shut up.

Q. Okay. Was he moaning at all?  
A. No.

Q. Okay. Did it appear he was in any kind of physical pain or distress?  
A. No, sir.

Q. During that four-hour period of time, did you observe anybody, this includes Marines, EPW's, or what have you, strike, kick, punch (b)(6)  
A. I didn't see anybody doing that.

Q. All right. Okay. So your shift ends, when is the next time -- who replaces you? Who's the next shift?  
A. I believe it was, I think it was Corporal (b)(6) if I'm not mistaken. I'm not sure. I'm almost positive.

Q. Who was on Corporal (b)(6) shift?  
A. Lance Corporal (b)(6), and Lance Corporal --

Q. Okay. So when is the next time after shift ends, when is the next time you see (b)(6)  
A. I believe it was about 1400 hours on the following day.

Q. Was it your shift again?  
A. Yes.

Q. And who was on this shift with you?  
A. Same people, Lance Corporal (b)(6) and Corporal (b)(6).

Q. What did you observe when you saw (b)(6)?  
A. I think he was lying on the floor at that time. I think he was sleeping.

Q. Okay. Was he -- did he still have have the flexycuffs on his wrists?  
A. I don't remember.

Q. How about a sandbag?  
A. No. I don't recall.

Q. Did it appear he was sleeping?  
A. Yes.

Q. What time did you say this was again?  
A. 1400.

Q. Your shift went from 1400 to when?  
ACC: Four hours later, so 1600 -- no, 1800.

Q. Was he sleeping the entire period?  
A. Yes.

Q. Where was he exactly?  
A. He was in the same cell block -- I believe he was in the same place that he was the day before.

Q. Okay. It was in one of the inside cells?  
A. Um, hm.

DO: This's a yes?

WIT: Yes.

DO: We can't take down, uh, huh, and um, hm's, that's why.

*Questions by the prosecution:*

Q. Was he -- you described before he was separated from the other two prisoners that were in that cell. Was he still separated?

A. I believe so.

Q. By what? Concertina wire?

A. Yes.

Q. During that period of time, did you see (b)(6) move at all?

A. No.

Q. Okay. From your recollection, he was sleeping the whole time?

A. Yes.

Q. Did you observe anybody, either EPW's or guards strike, hit, punch, kick, strangle (b)(6) in any way?

A. No.

Q. Okay. Your shift ends. When's the next time you see (b)(6)?

A. Well, it was the next day. I'm not sure of the time. Not sure if it was 2000 or 1600.

Q. Was it dark outside?

A. It was getting dark. I believe it was 2000.

Q. Okay.

A. He was naked.

Q. Was he naked inside or outside?

A. He was outside.

Q. Outside in the exercise yard?

A. Yes.

Q. What was he doing out there?

A. Sleeping.

Q. Was he lying on his back? Side? Stomach?

A. His side.

Q. Okay. Did it appear he was sleeping again?  
A. Yes. We were told he was sick and that he was shitting on himself. We were told that that doctors already told him, we didn't think nothing of it.

Q. Who told you he was sick?  
A. I believe it was Lance Corporal (b)(6)

Q. Now, during your shift, did anything unusual happen with (b)(6)  
A. No. But he looked like he was sick. It didn't seem like he was sleeping, but he was moving and moaning.

Q. Like he moaning?  
A. Yes.

Q. So he was making noises?  
A. He wasn't making noises all the time, but every now and then, he would say something, but at this time he was sounding weaker than the previous day he got there.

Q. Did he defecate himself again?  
A. Yes, he did.

Q. How many times?  
A. I believe, I believe two times.

Q. Okay. How did -- how were you notified that he did that?  
A. The smell.

Q. Where were you in relation to (b)(6)  
A. Well, I think (b)(6) was looking -- he was taking care of him, and I was on the other cell block watching the other two guys, but when I smelled the smell, I was about to tell the EPW's to go out and clean the guy.

Q. Both times or just one time?  
A. Both times.

Q. How far apart were the periods of defecation?  
A. Probably less than an hour.

Q. Okay. Did you go out and look to see?  
A. If it was cleaned right?



Q. Right. How he was cleaned and what the nature of the defecation was?  
A. No.

Q. Was it dark at that this time?  
A. Yeah. It was getting dark.

Q. What was the temperature at that time?  
A. It was about 80, 75, sir.

Q. Now, (b)(6) when he was out in exercise yard, what was he laying on?  
A. He was -- I don't remember. But I think he was naked, and I don't think he had anything on.

Q. So just laying on the ground?  
A. Yes.

Q. Laying on the sand?  
A. Yes.

Q. Now, how long did your shift last?  
A. Four hours.

Q. And when did it end?  
A. 2400 hours.

Q. During your shift, did any corpsman come to check (b)(6)?  
A. No.

Q. Did Major Paulus come check on (b)(6)?  
A. No. Not that I remember.

Q. Other than you and (b)(6) and (b)(6) was there anybody else that came and checked on (b)(6)?  
A. No.

Q. You said that you thought that he looked sick. Why?  
A. Because he was sounding weaker.

Q. Did he drink any water during that time frame?  
A. No.

Q. Okay. When you were over Iraq, did you ever suffer from diarrhea?  
A. Yes.

Q. What kind of treatment did you receive for that?  
A. Some pills I had to take.

Q. Okay. And that was it?  
A. Yeah.

Q. Okay. Did you know if anyone gave any pills to (b)(6) during your shift?  
A. No, but I know -- we were told he was saw by the doc. We figured he was taken care of.

Q. Okay. How many prisoners had you seen lie naked outside in the sand, in the exercise yard when you were there at the detention facility?  
A. He was the first one.

Q. Did you, was he the first one that remained naked outside for any extended period of time?  
A. Yes.

Q. Prior to that shift that you had on that day, on that four-hour period when he was out there naked, had you been told why (b)(6) was a prisoner?  
A. No. Not really. Nobody told us, but he was caught with a weapon of the 507th incident.

Q. When were you told that?  
A. I don't remember.

Q. Before or after?  
A. I believe the second day.

Q. So it was before he was out there naked?  
A. Yes.

Q. Was that all you were told? Is that all that you heard?  
A. That's it.

Q. Was it just scuttlebutt?  
A. Um, hm.

DO: That's a yes?

WIT: Yes, sir.

*Questions by the prosecution:*

Q. Okay. After your shift -- well, let me ask you this. During that period of time -- that four-hour period of time, did you see anybody, kick, hit, punch, strangle

(b)(6)  
A. After --

Q. During that four-hour period when he was naked out there in the exercise yard?

A. No. He went to sleep after that.

Q. No. Just during that four-hour period and he's in the exercise yard and you're on shift, did you see anybody --

A. Nobody went in the yard.

Q. Other than the prisoners that went and cleaned him, was there anybody else that went out to the exercise yard with (b)(6)

A. No.

Q. He was out there by himself?

A. Yes.

Q. I'm going to show you a photograph, Deposition Exhibit 3. Do you recognize the individual in that photo?

A. No. I didn't get to see his face.

Q. The person that was out in the yard, you never saw the person's face?

A. No. He got the sand out of his hand, and the second time he was lying, sleeping.

Q. Fair enough. All right. When your shift ended, when was the next time you saw (b)(6)

A. That was the only time I saw --

CC[MR. HIGGINS]: Objection. Foundation.

*Questions by the prosecution:*

Q. That was the last time on your shift?

A. Yes.

Q. You didn't see him after he passed away?  
A. No.

TC: All right. That's all I have.

CC[MR. HIGGINS]: A quick second.

*CROSS-EXAMINATION*

*Questions by the civilian counsel (Mr. Higgins):*

Q. You said -- I'm talking about this last shift, the last time you saw him. Actually, let me do something first. What's the date you first seen him?  
A. I believe it was the 3rd.

Q. You believe it was the 3rd.  
A. Yeah.

Q. And the second time?  
A. The 4th. Would be the 4th.

Q. Third time?  
A. The 5th.

Q. You never saw him again after that, did you?  
A. No.

Q. You said during the 5th, the two incidents of defecation, in which you sent prisoners out?  
A. Yes.

Q. To check on him?  
A. Yes.

Q. Was it the same two prisoners each time?  
A. Yes.

Q. Were they the (b)(6)?  
A. One of them.

Q. One of the (b)(6), and one was somebody else?  
A. No. It was the same person that I sent in. I'm not quite sure which one was it. It was one of the (b)(6)  
(b)(6)

Q. But there were two (b)(6). Right?

A. Yeah.

Q. And by, (b)(6) the (b)(6) brothers. The people that were arrested with (b)(6)

A. Yes.

Q. So you sent one of them in, and another prisoner each time?

A. Each time was the same person.

Q. Each time was the same person. Did you send one person or two people?

A. One person.

Q. And you said that you felt that he was -- that he looked sick because of how he sounded?

A. Yes.

Q. That his voice was getting weaker?

A. Yes.

Q. So it's actually that he sick. It wasn't that he looked sick?

A. Correct.

Q. And you had been told that a doctor had already seen him.

A. Yes.

Q. You figured he was taking care of?

A. Yes.

Q. Because when you were sick, you saw a corpsman, didn't you?

A. Yes.

Q. And the corpsman took care of you?

A. Yes.

Q. So you hear his voice getting weaker throughout your shift. Correct?

A. Yes.

Q. Who do you tell about that?

A. Nobody.

Q. Do you remember what the corpsman you saw when you were sick?  
A. Excuse me --  
Q. Do you remember which corpsman you saw when you were sick?  
A. No.  
Q. Do you remember what he looked like?  
A. It wasn't (b)(6) it was somebody else.  
Q. Was it a master chief?  
A. No.  
Q. During that shift on the 5th, did -- it was (b)(6) or (b)(6) along with you?  
A. Yes.  
Q. Either (b)(6) or (b)(6) say to you that they thought he sounded like he was getting sicker?  
A. No.  
Q. Besides the one prisoner that you sent out to clean (b)(6) on two occasions, (b)(6) and yourself, anybody else during your shift, see (b)(6)  
A. Nobody else.

CC[MR. HIGGINS]: Thank you.

DC[CAPT FOLK]: No questions.

TC: No follow up.

DO: All right. Lance corporal, I want to thank you for your appearance today, and instruct and ask that you not discuss your testimony with anyone other than the attorneys involved in this case. The attorneys that are here today. And once again, thank you for your appearance. I think the major has some things he wants to go over with you and take care of your travel claim, as well as arrange your attendance at the court-martial.

We're off the record.

The deposition adjourned.

**AUTHENTICATION OF DEPOSITION**

in the case of

Major C. A. Paulus and Sergeant G. P. Pittman, U.S.  
Marine Corps, 2d Battalion, 25th Marines, Reserve Unit, Garden  
Grove, New York.

Pursuant to R.C.M. 1104(a)(2)(B), the deposition in the foregoing  
case is authenticated by the trial counsel due to the deposition  
officer's return to reserve status.

---

L. J. FRANCIS  
Major, U.S. Marine Corps Reserve  
Trial Counsel

---



UNITED STATES MARINE CORPS  
MARINE CORPS BASE  
BOX 555010  
CAMP PENDLETON, CALIFORNIA 92055-5010

IN REPLY REFER TO:  
5800  
SJA  
14 MAY 2004

From: Commander  
To: Colonel D. L. Applegate (b)(6) USMCR

Subj: ORDER FOR ORAL DEPOSITIONS ICO UNITED STATES V. MAJOR CLARKE A. PAULUS  
(b)(6) USMC AND UNITED STATES V. SERGEANT GARY P. PITTMAN  
USMCR

Ref: (a) RCM 702, MCM (2002 Ed.)

1. Per the reference, you are hereby appointed as the deposition officer in the subject cases. The Marines to be deposed are as follows:

- a. Staff Sergeant (b)(6) USMCR attached to 2d Battalion, 25th Marines, (b)(6)
- b. Sergeant (b)(6) USMCR residing at (b)(6)  
(b)(6)
- c. Corporal (b)(6) USMCR residing at (b)(6)  
(b)(6)
- d. Lance Corporal (b)(6) USMCR residing at (b)(6)  
(b)(6)
- e. Lance Corporal (b)(6) USMCR attached to 2d Battalion, 25th Marines, (b)(6)
- f. Lance Corporal (b)(6) USMCR residing at (b)(6)  
(b)(6)
- g. Lance Corporal (b)(6) USMCR attached to 2d Battalion, 25th Marines, (b)(6)
- h. Lance Corporal (b)(6) USMCR attached to 2d Battalion, 25th Marines, (b)(6)
- i. Lance Corporal (b)(6) USMCR attached to 2d Battalion, 25th Marines, (b)(6)
- j. Lance Corporal (b)(6) USMCR attached to 2d Battalion, 25th Marines, (b)(6)
- k. Lance Corporal (b)(6) USMCR attached to 2d Battalion, 25th Marines, (b)(6)  
and,

22ND EXHIBIT 1  
(PROSECUTION)  
APPELLATE DISTRICT XXVII  
72 26



Subj: ORDER FOR ORAL DEPOSITIONS ICO UNITED STATES V. MAJOR CLARKE A. PAULUS  
(b)(6) USMC AND UNITED STATES V. SERGEANT GARY P. PITTMAN  
USMCR

1. Lance Corporal (b)(6) USMCR attached to 2d  
Battalion, 25th Marines, (b)(6)

2. This action is necessary because these Marines may become material witnesses in the subject cases and their testimony preserved should it become necessary. These depositions should be completed no later than 10 June 2004. If additional time is necessary, submit a written request for an extension. The depositions will be recorded by a court reporter for further use in court-martial proceedings.

3. By copy hereof, trial and defense counsel currently detailed in the subject cases will remain detailed for the oral depositions.

*M. L. Hampton*  
M. L. HAMPTON

Copy to:  
TC (Maj Francis)  
DC (Capt Jasper/Capt Folk)  
SJA, 1stMarDiv (Rear)



UNITED STATES MARINE CORPS  
MARINE CORPS BASE  
BOX 555010  
CAMP PENDLETON, CALIFORNIA 92055-5010

IN REPLY REFER TO:  
5800  
SJA

11 MAY 2004

From: Commanding General  
To: Colonel D. L. Applegate (b)(6) USMCR

Subj: ORDER FOR ORAL DEPOSITIONS ICO UNITED STATES V. MAJOR CLARKE A. PAULUS  
(b)(6) USMC AND UNITED STATES V. SERGEANT GARY P. PITTMAN  
(b)(6) USMCR

Ref: (a) RCM 702, MCM (2002 Ed.)

1. Per the reference, you are hereby appointed as the deposition officer in the subject cases. The Marines to be deposed are as follows:

- a. Major (b)(6) USMCR attached to 2d Battalion, 25th Marines, (b)(6)
- b. Sergeant (b)(6) USMCR residing at (b)(6)
- c. Sergeant (b)(6) USMCR attached to 2d Battalion, 25th Marines, (b)(6)
- d. Hospitalman Second-Class (b)(6) USNR residing at (b)(6)
- e. Lance Corporal (b)(6) USMCR attached to 2d Battalion, 25th Marines, (b)(6)
- f. Lance Corporal (b)(6) USMCR attached to 2d Battalion, 25th Marines, (b)(6)
- g. Lance Corporal (b)(6) USMCR attached to 2d Battalion, 25th Marines, (b)(6)
- h. Lance Corporal (b)(6) USMCR attached to 2d Battalion, 25th Marines, (b)(6)
- i. Lance Corporal (b)(6) USMCR attached to 2d Battalion, 25th Marines, (b)(6)
- j. Lance Corporal (b)(6) USMCR attached to 2d Battalion, 25th Marines, (b)(6)

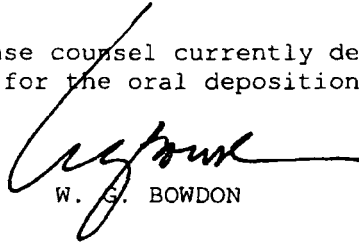
2. This action is necessary because these Marines and one Sailor may become material witnesses in the subject cases and their testimony preserved should it become necessary. These depositions should be completed no later than 10

XXVII  
APPROVED FOR RELEASE BY THE DIRECTOR OF THE ARMY AND AIR FORCE  
22 26  
EXHIBIT 2 (GRR)  
PROSECUTION 2 (GRR)

Subj: ORDER FOR ORAL DEPOSITIONS ICO UNITED STATES V. MAJOR CLARKE A. PAULUS  
(b)(6) USMC AND UNITED STATES V. SERGEANT GARY P. PITTMAN  
USMCR

June 2004. If additional time is necessary, submit a written request for an extension. The depositions will be recorded by a court reporter for further use in court-martial proceedings.

3. By copy hereof, trial and defense counsel currently detailed in the subject cases will remain detailed for the oral depositions.



W. G. BOWDON

Copy to:  
TC (Maj Francis)  
DC (Capt Jasper/Capt Folk)  
SJA, 1stMarDiv (Rear)

AE XXVII pgs 24-26 Removed under (b)(6)

DO: All right. We ready to proceed, gentlemen?

*An affirmative from all counsel.*

DO: Once again, I'd ask that all parties stipulate and agree to waive the reading of the Appointment Order, qualifications of counsel, the accused's rights, as well as description of the nature of the deposition and the status of objections here. Do all agree?

*An affirmative from all counsel.*

DO: Lance corporal, just let me explain something real quick before we get started. This is not a court-martial hearing, it's a deposition, so there'll be no rulings made today with respect to objections. The various attorneys and lawyers are probably going to make objections at some point, and merely if they're stated on the record, once they are state, I'll ask you to go ahead and answer the question to the best of your ability.

Do you understand?

WIT: Yes, sir.

DO: Do you have any questions before we get started?

WIT: Not at this very minute.

DO: All right. Government.

(b)(6) U.S. Marine Corps Reserve, was called as a witness by the prosecution, was sworn, and testified as follows:

*DIRECT EXAMINATION*

*Questions by the prosecution:*

Q. State your full name?

A. (b)(6)

Q. Spell the last name please.

A. (b)(6)

Q. And currently, you are a lance corporal in the United States Marine Corps Reserve?  
A. Yes.

Q. And your current unit is 2d Battalion, 25th Marines?  
A. Yes, sir.

Q. What's your current MOS?  
A. 0151.

Q. What's that?  
A. Admin clerk.

Q. What's your current home of record?  
A. (b)(6)

Q. Okay.  
A. (b)(6)

Q. And current phone number?  
A. (b)(6)

Q. Okay. Now, how long have you been in the United States Marine Corps Reserve?  
A. Two years, nine months.

Q. All right. You deployed in support of Operation Iraqi Freedom. Correct?  
A. Yes, sir.

Q. When you deployed, you went to Camp Lejeune at some point?  
A. Yes.

Q. When you were at Camp Lejeune, did you receive any Law of War or EPW handling training?  
A. Yes, sir.

Q. Please describe the type of training you received?  
A. It was a classroom-type training with the a Laws of War, and with the EPW training it was also a classroom training where we went over the five S's and a "T" and at a different time, we actually went over the handling of EPW's.

Q. Do you remember who gave those classes?  
A. To be honest with you, no.

Q. Do you recall whether Major Paulus gave any classes?  
A. He did give classes, but at this point in time, I do not remember any.

Q. Let's talk about the Law of War training, what do you recall from that training?  
A. Um, just some of the different Laws of War. Marines -- um, Marines treat all wounded. Marines do not harm enemy prisoners. Those are just two that I could think of off to top of my head.

Q. Was the issue of medical treatment for detainees ever brought up?  
A. In the actual Law of War, I do not remember.

Q. How about punching, kicking, or striking EPW's, was that ever brought up?  
A. It was never said that you could punch or do anything to the EPW's.

Q. Okay. Well, in the training was there any distinction drawn been striking an EPW out of self-defense vice doing it because you want to?  
A. Well, there was no instruction on to hit an EPW just because you want to.

Q. Okay. So what do you mean by that?  
A. Well, in our instruction, there was no actual advice given to strike an EPW. It was, if anything, to use only the force necessary to -- if the EPW were fighting back to sustain the aggressiveness toward you.

Q. Do you recall if Sergeant Pittman was in any of those classes with you?  
A. To be honest with you, I have no idea, sir. Most of the time, it was the whole battalion there, but I can't tell you exactly who was there.

Q. Now, when you were in Camp Lejeune, can you recall Sergeant Pittman being there with you?  
A. Yes, sir.

Q. At the time, was he with 2/25?  
A. I believe so, yes.

Q. Um, well, at some point you ended up in Iraq. Correct?  
A. Yes.

Q. And you were assigned to Camp Whitehorse?  
A. Yes.

Q. Then at Camp Whitehorse, you were assigned to a detention facility?  
A. Yes.

Q. When did that occur?  
A. I want to say April, the very beginning of April. I can't remember the exact date.

Q. The OIC was Major (b)(6) [REDACTED]  
A. Yes.

Q. And staff NCOIC?  
A. Staff Sergeant (b)(6) [REDACTED], -- no. It was Staff Sergeant --

Q. (b)(6) [REDACTED]  
A. Yes.

Q. Was Sergeant Pittman there at that time?  
A. Yes.

Q. Well, was there a sergeant that was acting as NCOIC?  
A. Sergeant (b)(6) [REDACTED]

Q. Now, I want to take you from the time you arrived at the camp up until 3 June 2003, just that period of time okay? During that period of time, did you ever see any of the guards strike an EPW in any way?  
A. Yes, I have seen it.

Q. Okay. And if you could, for just those instances, if you can recall in your mind, tell us what the circumstances were?  
A. Most of the time it was -- I guess, strike, would be a very harsh word because most of the time it would be if a prisoner wasn't obeying a command, then they would be maybe, I'm trying to use the right word here, corrected, physically corrected.

Q. Okay. For example, what -- as you're thinking back, give me an example of how an EPW wasn't following orders.  
A. Like if an EPW was being strip searched, and they start to -- most of the time they would come out instead of



staying flat against the wall, then they would be pushed back up against the wall.

Q. Okay. Did you ever observe a guard -- again, we're just talking this time frame here, did you ever observe a guard punch or kick an EPW?

A. Punch or kick? No. I don't think I ever saw an actual punch or a kick.

Q. All right. It's during this same period of time after the strip search phase, I guess, or the in-processing of a prisoner, they went into a phase where they were required to stand up in order to stay awake. Correct?

A. Yes.

Q. Okay. And well, what was your understanding of the purpose of that?

A. I thought it was to make them miserable so -- to know that they weren't having a good time, to know they needed to cooperate.

Q. Okay. And what was your understanding of the procedure that was employed at that time to accomplish that?

A. We were just told to make them stand for 50 minutes and let them sit for 10, and get them back up until the HET Team arrived.

Q. Okay. On average, how long would you typically be doing this to keep the prisoners in that condition?

A. No longer than -- most of the time, if they were brought in at night, they were interrogated in the morning. So sometimes it wouldn't even be 12 hours.

Q. Now, during that -- now, just talking about that period of time, from 3 June, prior to 3 June, was there ever a time -- well, let me ask you this. Did you ever observe a situation where a prisoner would not want to comply with this 50/10 or 50 minutes standing and 10 minutes sitting?

A. Multiple prisoners.

Q. Well, what tactics or techniques would be used in order to try to get them to stand?

A. Goom.

Q. The Arabic word for stand?

A. Yes.

Q. And what else?

A. Most of time we would yell Goom, and they would stand up or sit on the floor, and if they didn't listen, they were stood up.

Q. What techniques would you use to stand them up?

A. Just to lift them up.

Q. During this period of time, was there ever an occasion where you saw a Marine actually kick or punch an EPW to get them up?

A. Not on my shift.

Q. Who was on your shift?

A. Lance corporal (b)(6) and Sergeant (b)(6)

Q. Okay. And during that same period of time, was there ever an occasion where you saw either Lance Corporal (b)(6) or Sergeant Pittman strike, kick, punch an EPW?

A. I wasn't on that shift, so it would have been hard for me to see that. And most of the time, when they did the in-processing I had another duty where I would be watching the prisoners in the holding facility.

Q. Okay. So you never saw that going back to the original question?

A. Right.

Q. Now, let's -- okay. So let's talk about 3 June, between 3 June and 7 June 2003. Okay? On 3 June 2003, do you recall seeing prisoner by the name of (b)(6)?

A. Yes.

Q. Please tell me about your first interaction with (b)(6) meaning your first observations of him when he came into the camp on 3 June?

A. Oh, I didn't really -- he didn't stick out in my memory at first because I just thought he was another prisoner. And my job -- when he came in was again watching the holding facilities and watching the cell.

Q. Okay. Was there anything unusual about his in-processing that you could recall?

A. No.

Q. Did you observe anybody hit him? Slap him?

A. Like I said, I was watching the two holding pens.

Q. All right. Okay. So when was the next time that you observed him?  
A. Well, I saw him that night.

Q. Okay. In what capacity?  
A. He was -- it was actually the other half of my team was on duty, and that's when I saw him then.

Q. What was he doing at that time when you saw him?  
A. He was standing, and then I think he sat down and then another member of my team, Lance Corporal (b)(6) told him to stand up, and he didn't want to stand up.

Q. This is during the standing process?  
A. I would assume so. I wasn't there, so I don't know for sure. I wasn't on shift.

Q. So you were just passing through?  
A. Right. I was just walking through, checking on things.

Q. So what time of the night was this?  
A. It was between 2000 and midnight.

Q. And what was your -- what were you doing at that time that you were able to observe this?  
A. We were on down time at that point because we had just gotten off shift. We were on standby because the whole team was made up of six, but it was split three and three. And three of us would do one four-hour shift and the other three would do another four-hour shift. And they were on their four-hour shift, so our part of the team was on standby. If anything would have happened, then we would automatically go on.

Q. No. Go ahead?  
A. We were just on standby.

Q. Can you recall how many prisoners you had at this facility at the time?  
A. Well, there were three that came in, and there were others in the other side. I don't know how many.

Q. On average, how many prisoners would you have at any one time at the facility?  
A. Ten to 20, I'm not even sure, but they just came in and at the end, at this time, most of them just stayed.

Q. Say again?

A. Most of them were there for a little while at the end.

Q. So how did that work? What? Did you have six guards to guard all the prisoners at the camp at any one time?

A. Yes.

Q. This was a deposition exhibit we used in Sergeant Hennagin's deposition. It was marked Deposition Exhibit 5, and I want to show you this. This is a diagram he drew.

A. Okay.

Q. Do you recognize that?

A. Yes.

Q. What is that?

A. That's our detention facility.

Q. Is that a fair and accurate depiction of how the detention facility was laid out as of June 3, 2003?

A. Yes.

Q. Can you please mark with this pen -- when the six guards would be on duty watching the prisoners, where were the guard supposed to be?

A. It depends on where the prisoners were.

Q. Okay. Please tell me what you mean by that?

A. If the prisoners were here.

Q. Okay. And you're referring to the two prisoner holding cells?

A. Then there would be one guard here with a saw.

Q. So you mark it was an "S" where the saw would be?

A. Another guard here.

Q. And if you could put an X2. Okay. And that would be -- represent what guard?

A. That would be another guard with an M16 at Condition 1.

Q. Okay.

A. This in this same thing.

Q. Just put a three by that, and that would be the same thing here?

A. Same thing here, another M16.

Q. Okay. So in each holding cells for prisoners, you have two Marines standing guard, one of which, would have a saw?

A. Yeah, three is the saw. Well, not actually employed in his shoulder. He would be sitting next to the saw ready.

Q.. If need be?

A. If need be.

Q. And what was the purpose of that? Of having the saw in there?

A. In case a riot were to break out.

Q. Okay. And the other two?

A. And the other two would be roving guards that would walk around.

Q.. Okay. If you had a prisoner out in the exercise yard, how would that typically work?

A. If you had one prisoner in the exercise yard?

Q.. Correct?

A. Then you would have one of these roving guards.

Q.. So would mark that "X" five and six for the roving guard. Right?

A. Right.

Q.. And what -- okay. Thank you?

A. Did you want to take a look at this?

DC[CAPT JASPER]: Thank you, sir.

*Questions by the prosecution:*

Q. All right. So let's go back to (b)(6). You were talking about how you saw (b)(6) trying to get him up?

A. Yes.

Q. What -- did he have flexycuffs on his wrists at this time?

A. I believe so.

Q. Was that the SOP?

A. Yes, he did. They were to remain on until otherwise directed.

Q. And did he have a sandbag on his head?  
A. I don't want to say yes or no.

Q. Okay. So how, during this period of time, when you saw (b)(6) getting him up, what technique was (b)(6) using to get him up?  
A. Well, first he screamed, Goom, you know. Went over to him, said Goom again, so he knew he was talking to him, and then he still didn't listen. So (b)(6) grabbed him under the armpits and picked him up.

Q. At any time, did you see (b)(6) punch or kick him?  
A. No.

Q. Um, do you recall who was on shift with (b)(6) at that time?  
A. Lance Corporal (b)(6) Lance Corporal (b)(6) and Corporal (b)(6).

Q. Okay. So you observed (b)(6) on that occasion. When's the next occasion that you observed (b)(6)?  
A. When I came on shift on the -- would have been the --

Q. 4th?  
A. The next day the 4th.

Q. Okay. How was it you observed him?  
A. Just like any other prisoner -- well, not like any other prisoner because word had been passed that he wasn't eating, and so we had watched him that shift to see what he did. He didn't do anything.

Q. What time of day was this?  
A. Between 2000 and midnight.

Q. Um, was he outside or inside?  
A. Inside.

Q. When you say you were watching him, what do you mean?  
A. Just looking over at him to see if he, if there were any problems with him or anything. If he was eating, if he was drinking.

Q. You say he was laying down?  
A. Well, it was night, so he was probably sleeping.

Q. Okay. At that point, did he have flexycuffs on his wrists?  
A. I don't believe so.

Q. How about a sandbag on his head?  
A. No.

Q. Do you recall him making any movements whatsoever during this period of time?  
A. None that were important enough to remember.

Q. Let's show you a photograph.  
A. I see it.

Q. It's Deposition Exhibit 3? Do you recognize that individual in that photograph?  
A. That's him.

Q. That's who?  
A. (b)(6)

Q. Is that a fair and accurate depiction of the way he looked at that time you saw him?  
A. No.

Q. What's not accurate?  
A. He's dirty.

Q. So the dirt wasn't on him?  
A. The dirt and sand and everything.

Q. How about the marks on his face, were they there at the time?  
A. I don't believe so.

Q. So other than the dirt, other than the marks, is that a fair and accurate depiction of him?  
A. Yes.

Q. Okay. Um, okay. So you see him for how long?  
A. Four hours.

Q. Four hours. In which position are you manning at that time?  
A. I was inside the far cell, if you will.

Q. Were you manning the SAW or the M16?  
A. M16.

Q. Okay. All right. So what -- after that, during that period of time, did you observe anybody punch or kick (b)(6)?

A. No.

Q. So you're saying you thought (b)(6) was asleep that entire time?

A. Yes. Most of the prisoners at that time would sleep.

Q. When's the next time you saw (b)(6) after that?

A. When I came on the 4th, and word had been passed that he had defecated on himself.

Q. What time of the day was this?

A. I know it was light out. I think we had just done the shift change, so it's possible it could have been around 1600.

Q. Do you recall what the temperature was at the time?

A. It was June, it was hot.

Q. What's hot to you?

A. Like 120, 130 degrees.

Q. All right. So you come on shift, and the people on your shift at this time are who?

A. I believe when I came on, it was all -- I don't remember exactly everybody who was there because I was busy with him. but I know that Lance Corporal (b)(6) Sergeant (b)(6) and the rest of my team was there too. Corporal (b)(6) Lance Corporal (b)(6) Lance Corporal (b)(6).

Q. So you come on shift, you're told he defecated himself?

A. Right.

Q. After you were told, what happened?

A. I went to go get gloves and masks.

Q. Did you actually see (b)(6) before you went to get the gloves and masks?

A. Yeah. I looked in and you could see his clothes had marks and everything all over it.

Q. What do you mean by marks?

A. Well, like, defecation all over his --



Q. Now, did you see any defecation on the floor around him?  
A. He was laying in it, so --

Q. Was he laying on his back or on his stomach or on his side?  
A. To be honest, I don't remember.

Q. Was he making any noises at that time?  
A. No, not that I remember at that time.

Q. Can you recall how he was laying? I mean, I know --  
A. He was laying sideways, perpendicular to the door.

Q. And was he -- were his knees up or down, do you recall?  
A. I believe they were down.

Q. How about his arms?  
A. They were at his side.

Q. All right. Okay. So you saw that, and then you say you went and got gloves and masks?  
A. Yes.

Q. Did you find some?  
A. Yes.

Q. And what are you talking about when you say gloves and masks?  
A. Medical gloves that you put on.

Q. Like latex gloves?  
A. Yes.

Q. Where did you get those?  
A. From the hotel. They were furnished by the medical staff there.

Q. Okay. What other types of items did you have that were furnished by the medical staff?  
A. Gloves, masks, nothing else I could think of. I knew there was a pack there.

Q. Did you have any stretchers?  
A. No. Not that I can -- no. I don't think so.

Q. All right. So you go and you get the gloves and masks, and what happens next?

A. Then me and -- I entered the cell and Lance Corporal (b)(6) was already in there, and then he was -- I don't remember if he was up when he got in there or if he got up while I was in there or what the deal was --

Q. And you're talking about (b)(6) Right?

A. Yes. The next thing I can remember is him falling face forward, just right into the concertina wire, and he hit his head on the wall before he hit the wire. And then he just laid on the wire.

Q. Lied in the wire front way?

A. Face first. Looked like he had fallen asleep, almost. Had narcolepsy.

Q. What do you mean?

DO: Narcolepsy.

WIT: That's what he looked like. he just fell asleep. Myself and Lance Corporal (b)(6) picked him up out of the wire and put him on the rack that was in the back of the cell.

Q. Do you recall whether he was grasping the wire?

A. I don't remember if he was grasping the wire.

Q. Talk to me about the wire, were the barbs sharp?

A. Yes.

Q. When you -- did his clothing get caught at all?

A. Yes.

Q. What did you to release the clothing?

A. We carefully pulled the clothing out of the sharp edges so we could pull him out of there.

Q. Okay. Well, when you were doing that, what's (b)(6) doing?

A. Just being very uncooperative. Just kind of laying there.

Q. What's his physical -- when you say uncooperative, what do you mean?

A. Like, he's just trying to be lifeless, if you will.

Q. Okay. Was he making any noises?  
A. Not that I remember, no.

Q. Okay. Was he fighting you?  
A. Fighting? I don't think he was fighting. He just wasn't doing anything.

Q. You said he hit his head on the wall?  
A. Yes.

Q. What part of his head?  
A. The top part of his head, right here.

Q. Okay. So the front hairline?

DO: Hang on, gentlemen, the sergeant can't get things down when you're both talking. Just one of the rules of depositions.

*Questions by the prosecution:*

Q. Let me just clear up, where the forehead meets the hairline, that area?  
A. Well, like I said, I was at the front of the cell and looking probably about 10 or 15 yards away, so I don't know exactly where it hit him. I just know he hit the top forehead part of his forehead on the wall.

Q. How did you know?  
A. Because I hear it. I saw his head go back.

Q. What was he doing with his arms when he fell?  
A. Nothing.

Q. So did he put his arms out to brace himself?  
A. No.

Q. Now, he fell into the wire, did he make contact with the floor at all or did the wire break his fall?  
A. I think the wire did it first, kind of catch him, but he eventually did hit the floor.

Q. When he hit the floor?  
A. I don't think he hit the floor full force. Some of the wire did catch some of that weight. Then he fell.

Q. Please describe the impact when he hit the floor, meaning, how hard did he hit the floor?  
A. How would you like me to describe that to you?

Q. However you want to. However you think best describes how me hit the floor?  
A. Well, he was a heavy man. So there was some force when he hit the floor because he has a lot of weight.

Q. What part of his body hit the floor?  
A. The front part of his body.

Q. So his chest?  
A. His chest, his whole torso, his head.

Q. And his arms didn't go out to brace his fall?  
A. No.

Q. Now, he's in the wire, you and (b)(6) are getting him out, what happens next?  
A. We bring him over to the rack, which was in the back of the cell, which they used for bathroom purposes, and we laid him down there. And he was just completely covered in his own defecation so --

Q. So you laid him down on the rack?  
A. Yes. And then we stripped him of his clothing.

Q. What was there on the rack? Was it a mattress or something?  
A. No. It was just a regular rack.

Q. Just the wires?  
A. Yes.

Q. So you laid him down, what happens next?  
A. Then we strip off his clothes, and at that point, I take his cloths to berm to get rid of them.

Q. When you took the clothes off, did he have any defecation on his body?  
A. Yes.

Q. Please describe where you saw the defecation?  
A. From his lower back down his legs.

Q. Front and back or just back?  
A. I knew it was the back. I don't remember much being on the front.

Q. Well, please describe for me the defecation, was it solid or was it runny?  
A. It was runny.

Q. Did it appear to be diarrhea?  
A. I'm not a medical expert, so I don't know what diarrhea looks like.

Q. Well, have you ever had diarrhea in your life?  
A. Yes.

Q. Did it look something like that?  
A. It was runny but it wasn't water.

Q. Okay. Was there anything unique about the smell of this defecation?  
A. It was horrible. I don't think it was unique. I just tried not to smell it.

Q. Did you have the mask on at this point?  
A. Yes.

Q. Did (b)(6) have the mask on?  
A. I believe so.

Q. Did you both have the gloves on?  
A. Yes.

Q. Okay. So you take the clothes and you said you went and burned them?  
A. Yes. In the burn pit.

Q. When's the next time you saw (b)(6)?  
A. When I returned, Lance Corporal (b)(6) was carrying him, (b)(6) to the recreation cell. The outer cell.

Q. Okay. Can I get that diagram again.  
A. To the exercise yard.

Q. Hold on, got a copy on the diagram. So the label where it's labeled "exercise yard," that's where you saw --  
A. No. I saw him right here to the entrance to the cell.

Q. So between the two cells that are marked "prisoners"?  
A. Yes.

Q. What cell was he in at this time?  
A. This cell.

Q. Mark with an "NH", the cell that you saw him in, and then put a circle around that please.  
A. [The witness did as directed.]

Q. So that was the cell that (b)(6) was in. Correct?  
A. Yes.

Q. So you saw (b)(6) and (b)(6) right at the doorway of that cell. Correct?  
A. Yes.

Q. And how is (b)(6) carrying him at this time?  
A. He had him right underneath the armpits.

Q. Okay. And so was he dragging him at this point?  
A. I couldn't see him, as soon as I got here and saw him, that's when he stopped and I came over and helped him. So I didn't witness him dragging.

Q. To that point. Okay. Well, when he had him underneath the armpits, what was (b)(6) doing?  
A. Just laying there, as he had done the whole time.

Q. What's his arms doing?  
A. Just laying to the side. Just --

Q. Down to the side, is there any tension in the arms?  
A. No.

Q. Just laying limp?  
A. Yes.

Q. Did you see his legs?  
A. Same thing. His whole body --

Q. His legs are straight out in front of him?  
A. Yes.

Q. How about his face? Did you get a look at his face?  
A. No. I wasn't -- I was more concerned with helping (b)(6) at that point.

Q. Did you hear (b)(6) making any noises?  
A. No.

Q. So you come up to (b)(6) now at this point, is there anybody else other than you or (b)(6) that are present?  
A. There were actually a few people present, but I couldn't tell you who they were because I wasn't concerned with who was there.

Q. Was Major Paulus there?  
A. Yes, he was.

Q. How was it that you observed him?  
A. When myself, when Lance Corporal (b)(6) and I were taking care of Mr. (b)(6) in the cell, Major Paulus was here.

Q. Okay. If you could just mark a "P" where you saw Major Paulus.  
A. *[The witness did as directed.]*

Q. What was Major Paulus doing?  
A. Just giving direction.

Q. What do you mean?  
A. Take him out of the wire, put him on the rack, take off his clothes.

Q. Okay. All right. Any other directions?  
A. Those are the ones I remember.

Q. So you come back to (b)(6) You see what (b)(6) is doing with his hands underneath his arms, what happens next?  
A. I go over and assist (b)(6) and carry him into the exercise yard.

Q. How it that you carried him?  
A. The same way that Lance Corporal (b)(6) was carrying him.

Q. Do you recall whether (b)(6) ever grabbed him by the head, chin area?  
A. No.

Q. At this point, when you started helping (b)(6) did you get a look at (b)(6) face?

A. No.

Q. But you were grabbing him by the legs?

A. No. I came over and grabbed him underneath his arms.

Q. Okay. Now, when you grabbed him under the arms, what was (b)(6) arms doing?

A. Same thing.

Q. Okay. So just limp?

A. Yes.

Q. And how about his legs?

A. Same thing.

Q. How about his head?

A. It wasn't completely limp because if it was limp, his head would have been completely back, but it could have been, but his head was against my chest.

Q. Okay.

A. So it was supported.

Q. Was he saying anything?

A. No.

Q. How far did you and (b)(6) and you carry him?

A. Just to the entrance.

Q. Approximately how far is that?

A. From here to here, which would have been 10 yards maybe.

Q. Okay. At that point, is (b)(6) naked?

A. Yes.

Q. Does he still have the defecation on him?

A. Yes. He was brought out to the exercise yard so he could be cleaned off.

Q. So when he get out to the exercise yard, what happens?

A. Two prisoners from the cell come in and clean this cell.

Q. So two prisoners from the cell that (b)(6) was not in?

A. Yes.



Q. Come in to clean (b)(6) in the other cell?  
A. They come in to clean his mess and himself.

Q. Then what else happen?  
A. Then the two prisoners he came in with, I believe it was those two, went out and cleaned (b)(6)

Q. Okay. Now, (b)(6) out in exercise yard, is he still naked?  
A. Yes.

Q. And is he put on any type of a mat or blanket or anything?  
A. No. He's out there on the sand.

Q. And what time of the day was this?  
A. Like, I don't know the exact time --

Q. Was the sun still up?  
A. Yes. The sun was still up.

Q. And was it still as hot as you described earlier?  
A. It would have had to been, the sun was still up.

Q. Okay. So (b)(6) is out there, did you actually see the individuals. Cleaning?  
A. I was in this cell with the prisoners that were cleaning, so I was watching them clean the cell while they were outside cleaning, so I didn't witness his actual cleaning.

Q. What was your understanding as to why you were moving (b)(6) from that cell to the exercise yard?  
A. So he could be cleaned, so the cell could be clean.

Q. Okay. Um, at the time when you; originally went into the cell, and you saw (b)(6) was there any other prisoners in there?  
A. No. Not when I went in the cell.

Q. Well, in that cell is it divided by concertina wire?  
A. Yes.

Q. So there's three different sections that are sectioned off. Right?  
A. There's a guard section, a small section right here, and a large bigger section.

Q. So if you could just circle the lines that indicate sections?

A. Do you want me to draw the wires?

Q. Yes.

A. Do you want me to draw it on the outside, sir.

Q. Sure.

DO: Lance corporal, was this just the single stack of concertina wire?

WIT: Double stack.

DO: Okay.

WIT: Around the outside.

*Questions by the prosecution:*

Q. Okay. Now, were there breaks in the wire?

A. There would have been a release right here, and a release right here actually.

Q. Will you draw a square where the release is gone?

A. [The witness did as directed.]

Q. Okay. During the night time, did you see Major (b)(6)?

A. I do not remember. It's possible.

Q. Do you know who he is?

A. Yes. He's an officer with --

Q. Did you ever see Staff Sergeant (b)(6)?

A. Again, I don't remember. He could have been there. He was the staff NCOIC of the detention facility.

Q. Okay. All right. So if you just also draw a rectangle where the rack was?

A. [The witness did as directed.]

Q. Okay. After (b)(6) was placed in the exercise yard, now, you're back in there monitoring the prisoners that are cleaning up the mess in the cell, when's the next time that you see (b)(6)?

A. I see him when that's all finished laying in the exercise room.

Q. Was he by himself at this point?  
A. Yes.

Q. Is there any guard out there?  
A. Yes.

Q. Who?  
A. I believe at this point, it was Sergeant (b)(6) but I can't be absolutely positive.

Q. Now, did you ever see a corpsman come and check him?  
A. Yes, but -- I think it was HM-3 (b)(6) but I'm not sure. It could have been HM-2 (b)(6) also.

Q. Did you actually see?  
A. No, I didn't see. I didn't witness it.

Q. So you see him laying out there, what were you doing at the time?  
A. I believe I was still on post, so I was -- I don't remember exactly if I was watching out here or -- no. I was in the cell right here.

Q. So the cell that (b)(6) was not in?  
A. Yes.

Q. So you place (b)(6) out in the exercise yard, were there in any other prisoners out there?  
A. No, sir.

Q. Where were the other prisoners?  
A. In this cell.

Q. So that was the cell that (b)(6) was not in?  
A. Yes.

Q. Um, at some point that day, you had to stand up because there was some protesters that were coming to the camp. Do you recall that?  
A. Yes. That was for a --

Q. The (b)(6)  
A. Yes. There was some (b)(6) supporters that obviously had some problems.

Q. Were you stood up before or after your dealing with (b)(6)  
A. What do you mean by "stood up"?

Q. Meaning, well, tell me what you had to do when this --  
A. I was on post right here, and --

Q. And you just indicated a door between the two cells?  
A. Yes. And I don't remember who exactly came back, but I guess there was some type of meeting in here.

Q. An it's --  
A. Yes --

Q. Hold on a second. So you just indicated the room where the guards --  
A. This was our place where we -- and I guess there was a meeting. I'm not saying exactly where, but in there. And the information was relayed back to us that we had to go get our Kevlars, get our body armor, and everything, and be read to standby.

Q. Okay.  
A. While the rest of the camp also surrounded the berm.

Q. So during this, I'm just going use the words "stood up", so we'll know what we're talking about. During this standing-up portion, what -- were you still guarding the prisoners at the time?  
A. Yes.

Q. Did you see during that period of time, how long did this last?  
A. I couldn't even tell you, sir.

Q. Was it all night?  
A. I -- I don't think it was all night, sir.

Q. How long do you recall you were wearing your Kevlar and flak jacket?  
A. For the remainder of the day. I don't remember how long exactly.

Q. Well, you say "Remainder of the day," what do you mean? Until you went to sleep that night?  
A. No. I think I took it off before. To be honest with you, sir, I don't remember.

Q. Well, let me ask you this, during that period of time when you were standing guard, did any prisoners go out into the exercise yard with (b)(6) [REDACTED]  
A. Any prisoners?

Q. Right?

CC[MR. HIGGINS]: Asked and answered as to "Cleaned him up".

*Questions by the prosecution:*

Q. Other than the two that cleaned him up?

A. I don't think so.

Q. Okay. So when (b)(6) was out there, what was your observations of him for the rest of the day?

A. He showed signs of movement at that point in time when he was out in the yard.

Q. What with was he doing?

A. He would roll from his back to his side, and then back over, and then to his other side.

Q. How frequently was he doing that?

A. Every half hour.

Q. Did he sit up?

A. No. I never saw him sit up.

Q. Dead he stand up?

A. No. I never saw him stand up?

Q. What was he doing with his legs and arms?

A. Again, just laying at his side as if he were to lay down in the bed.

Q. Was he making any noises?

A. Not they can remember.

Q. Did you see him drink any water?

A. No. He was laying down the whole time, so I didn't see him.

Q. Did you see him eat anything?

A. No.

Q. Do you know if he was offered any water?

A. I'm sure he was offered water. I didn't actually witness anyone offering water.

Q. Okay. Um, after your shift ended, when was the next time you saw (b)(6)

A. In a body bag at 0200.

Q. When did your shift end?  
A. I believe it ended at 2000, but I'm not sure.

Q. Any time during your shift, did you observe anyone kick, punch, strangle (b)(6) [REDACTED]  
A. No.

Q. Um, all right. I just want to back up for a minute. You said you had suffered from diarrhea?  
A. That I had?

Q. Yes.  
A. Well, I had a sickness, which everyone pretty much got.

Q. What's that?  
A. I don't even remember what it was called right now.

Q. Was it diarrhea?  
A. It was a complete dehydration where I was throwing up and also having diarrhea.

Q. What type of treatment did you receive?  
A. I was put on an IV and given some --

Q. Who gave you this IV?  
A. The medical staff. I went over to the corpsman.

Q. Do you remember which corpsman?  
A. I can see him, but I can't think of his name.

Q. Was it (b)(6) [REDACTED]  
A. No.

Q. Was this the Battalion Aid Station with Doctor (b)(6) [REDACTED]  
A. Yes.

Q. How many days were you out -- were you actually in a light-duty status because of the sickness?  
A. I believe it was two days.

Q. Two days?  
A. One day I laid in the rack, and the other day, I was just in a light-duty status. I was SIQ. And then full duty.

Q. When did you have this illness?  
A. I don't remember.

Q. Was this prior to the incident with (b)(6) ?  
A. I believe so. It was somewhere earlier in my time being there.

Q. And this was still when you were stationed at Camp Whitehorse?  
A. Yes.

Q. Well, let's talk about the medical treatment provided to EPW's when you were there at Camp Whitehorse. Did you ever see any EPW's treated medically?  
A. Yes. There was a few EPW's that were brought to the hospital.

Q. Can you recall any specific instances that you can recall for us?  
A. Yes. We had a prisoner there -- I forget what was wrong with them, but he -- I know we had to go to the hospital, I think twice. I don't remember if it was because he was fainting or something else. Or he was having seizures, I think.

Q. Okay.  
A. But he was brought to the hospital.

Q. Was that when Major (b)(6) was OIC?  
A. I don't remember.

Q. Any other instances you can recall?  
A. Not specifically, no.

Q. Okay. When you were a guard there at the camp, what was your understanding as to the level of medical care a prisoner is supposed to receive?

CC[MR. HIGGINS]: Objection. Foundation.

*Questions by the prosecution:*

Q. Go ahead and answer?  
A. When they were brought in an in-processed, they were also processed by medical staff to see what type of medical conditions they were in, and if they needed any treatment, they were given treatment.

Q. If a prisoners needed medical treatment and --  
A. He was given medical treatment.

Q. Okay. That was your understanding?  
A. Yes.

Q. And what level of medical treatment?

CC[MR. HIGGINS]: Objection. Foundation.

*Questions by the prosecution:*

Q. Go ahead.  
A. Whatever level deemed necessary. I don't know.

Q. All right. Was (b)(6) -- well, let me ask you this, how many prisoners when you were there, were left outside naked?

A. I don't know, a couple.

Q. A couple?  
A. I don't know exact number.

Q. So (b)(6) wasn't the first, is what you're saying?  
A. No. There was others.

Q. And can you recall a situation when they were left outside naked?

A. Two of the them that I remember, specifically, they -- I know the reason why they came in, I don't know why they were naked.

Q. The reason they came in?

A. They had thrown a grenade into a Army HMMWV.

Q. When they were out -- when you saw them outside naked, what were they doing?

A. Sitting.

Q. So they didn't appear ill to you?  
A. Ill?

Q. Right?  
A. No.

Q. So they weren't laying like (b)(6) was laying down?



CC[MR. HIGGINS]: Objection. Leading.

*Questions by the prosecution:*

Q. Had either of them defecated themselves?

A. No. They hadn't.

Q. Was this -- when you saw these individuals naked, was this during the in-processing phase? Meaning, the strip search phase?

A. No. They had already been strip searched, and they were in the cell.

Q. Okay. Who was OIC during that period of time?

A. I don't know.

Q. Was it before the (b)(6) incident?

A. Yes.

Q. How long before?

A. I don't know.

Q. More than a week before?

CC[MR. HIGGINS]: Objection. Asked and answered.

*Questions by the prosecution:*

Q. Not sure? Okay. Were those -- so those are the only three you saw naked outside?

A. That I can remember, yes, sir.

Q. Was that something out of the ordinary?

A. Yes. That was a extreme.

Q. Okay. Now, at any time prior to when (b)(6) was outside naked in the exercise yard, any time prior to that had you heard why (b)(6) was a prisoner? What had you heard?

A. He was in possession of the rifle that had 507th Maintenance Battalion on it.

Q. Now, other than being in possession of that, did you hear anything else about that?

CC[MR. HIGGINS]: Objection. Hearsay.

DO: You can go ahead and answer the question lance corporal.

WIT: Just no. That he had come in with the rifle that belonged to 507th Maintenance Battalion.

Q. Okay. Was there a --

A. That he was a bad guy. I guess he was involved.

Q. Okay. Where did you hear that he was a bad guy and he was involved with them?

A. I don't remember, it was just --

Q. Like scuttlebutt?

A. Yes.

Q. What did you think when you heard that?

CC[MR. HIGGINS]: Objection. Relevance.

*Questions by the prosecution:*

Q. Go ahead.

A. That he was a bad guy.

Q. Did you hear any of the Marines talking about it? About his suspected involvement?

A. Well, that was the talk. I mean, if you hear of your fellow American's rifle turning up in any of the Iraqi's hands, I mean, obviously, it's going to be tough not to talk about it.

Q. Well, did anybody in a leadership position, any of the sergeants, staff NCO's, OIC ever speak to your knowledge, ever speak to any of the Marines about

(b)(6)  
A. Prisoners were spoke about daily.

Q. I mean, speak about him directly to the Marines as a group?

A. Not that I can remember. As a group?

Q. Right.

A. No.

Q. As to any of the shifts?

A. Not that I remember. No.

Q. Um, did you sense any hostility amongst the Marines towards (b)(6)?  
A. Yes.

Q. How so?  
A. He was in possession of a United States Army rifle. Obviously there's going to be hostility.

Q. Kind of describe different things that stick out in your mind as to hostility you observed. I mean the words spoken, the reaction, so forth?  
A. Just general dislike. Uh, mine, nobody liked him. Everyone thought he was a dirt bag.

Q. Okay. Um, um, during your shift, other than that one time that (b)(6) defecated himself, during your shift, did he derectate himself again?  
A. During my shift?

Q. Right.  
A. No.

Q. Did Major Paulus or anybody come to you and give any instruction about what to do regarding (b)(6) condition out in the exercise yard?

CC[MR. HIGGINS]: Objection. Compound.

*Questions by the prosecution:*

Q. Go ahead.  
A. No. Not that I remember.

Q. Okay. Anybody give you any instruction as to things to look out for regarding his health?  
A. No. Not myself. Not me in particular, but I'm the lance corporal, I'm not the head of my shift. So the instructions were probably given to the sergeant.

Q. And that would have been Sergeant (b)(6)?  
A. Yes.

Q. Did Sergeant (b)(6) pass anything to you regarding that regarding that?  
A. Sergeant (b)(6) was the one actually watching (b)(6).

TC: So -- that's all I got. Thank you.

CROSS-EXAMINATION

Questions by the civilian counsel (Mr. Higgins):

- Q. I'm Major Paulus' attorney. During the questions you just were answering, you kind of paused here and there, is it hard to remember this stuff?
- A. It was over a year ago. Well, exactly a year ago. Yes. A lot has happened since then.
- Q. And at the time prior to (b)(6) dying, there was no particular need to focus in on everything he did?
- A. No. Not at all.
- Q. So what's happening, you're trying to go back into your memory and try to remember something you weren't particularly paying close attention to?
- A. Yes.
- TC: Is that fair to say?
- A. Yes.
- Q. And is it possible that your memory is incorrect on certain things?
- A. It's possible.
- Q. You're doing the best you can?
- A. Yes.
- Q. I want to talk to you about getting the gloves and the masks. Do you remember that when you're in the cell?
- A. Yes.
- Q. You go to try to find some gloves and masks?
- A. Yes.
- Q. Um, we had heard the only thing you were able to find were the black leather gloves, that the latex gloves --
- A. No. I found a pair of latex gloves.
- Q. You found one pair?
- A. I believe I did. And I know that -- I know I didn't find two.
- Q. You didn't find two?
- A. I think I did find one and have another pair of black gloves.

Q. And you kept the latex gloves for yourself?  
A. Yes.

Q. And you gave the black gloves to (b)(6)?  
A. Yes.

Q. And you may have found one mask?  
A. I thought I found two.

Q. You're not sure?  
A. I'm not sure, but I thought I found two.

Q. Don't be fooled into telling me -- I want you to tell me what you remember.  
A. Okay.

Q. So you think it was two?  
A. I think so, sir.

Q. You've been asked questions about the guy's reactions to (b)(6). As you heard that (b)(6) was there, do you have -- you heard he was a difficult person?  
A. Yes.

Q. And that he wouldn't comply with his orders?  
A. Yes.

Q. Was that common?  
A. Was that common with prisoners?

Q. Yes.  
A. Most of the time.

Q. Was (b)(6) particularly non-compliant?  
A. Yes.

Q. Did that lead to -- into the belief that he's a dirt bag? Did that play into that?  
A. There's the fact that he was in possession of that rifle.

Q. When you said that he hit his head, was there any blood on his forehead?  
A. No.

Q. Did you see any bruising or swelling?  
A. Bruising or swelling? I wasn't focussed on his head. I was more focussed on the rest of his body that was covered in defecation.

Q. Have you ever had an egg on your head?  
A. Yes.

Q. You bang your head, it's kind of a neat thing that happens to your head. Right?  
A. Yes.

Q. Those seem to happen most of the time when you bang it. Right?  
A. Right.

Q. Did you see if he had an egg of any kind that -- it didn't catch your eye?  
A. No. I wasn't paying attention to his head.

Q. When you said you saw him fell, you were 10 to 15 yards away?  
A. I was at the front entrance of the cell, and he was about mid-way through the cell.

Q. Was Lance Corporal (b)(6) closer to him?  
A. Yes.

Q. About how far was Lance Corporal (b)(6)?  
A. Um, I think he was actually going -- he was either in the very entrance of the actual prisoner cell itself, or going through it.

Q. In feet, how close was (b)(6) to him?  
A. Five, ten.

Q. Feet?  
A. Maybe 15, 20, feet.

Q. When (b)(6) fell?  
A. Yes.

Q. When (b)(6) fell?  
A. Yes.

TC: Is that you or is that (b)(6)

WIT: Lance Corporal (b)(6)

Questions by the civilian counsel (Mr. Higgins):

Q. Now, you said the three guys would have shift at any given time?

A. Yes.

Q. You drew six "X's" as to where people would be during a guard shift. I'm confused. would you please explain?

A. That's the -- these six "X's" would indicate if a full shift was on.

Q. A full shift was on?

A. Yes.

Q. And that wasn't the norm, was it?

A. At the beginning it was.

Q. But in the June time frame?

A. No.

Q. It would have been down to three?

A. Yes.

Q. So all those "X's" would -- just should have been those three "X's" that should have been on there?

A. Yes.

Q. And they would have been covering the whole area?

A. Yes.

Q. Deal with me, so I get all my questions out. Okay?

A. Did you sleep on beds? Did you have a bed to sleep on? I wouldn't have called it a bed.

Q. What would you call it?

A. A rack. I slept on there with my sleeping bag underneath me.

Q. Did you have a mattress?

A. No.

Q. Did anyone have a mattress?  
A. I believe -- I know in Kuwait we had mattresses and think when a PX came around, it was possible to buy a mattress. So it's possible that other people could have had mattresses.

Q. They would have had to buy it themselves?  
A. Yes.

Q. So they didn't have to supply closet with mattresses in it, did they?  
A. No, sir.

Q. Were there a lot of extra racks to put -- and by racks, I mean, the metal stuff?  
A. Yes. There was many in the cells, themselves.

Q. No mats on them?  
A. But no mattresses.

Q. They were actually used and toilet seats, weren't they?  
A. Yes.

Q. That was what their purpose was, some place to support yourself while you were defecating?  
A. Yes.

Q. Now, that wouldn't have been something you would want to lay on after they had been used for that?  
A. No.

Q. Now, you already said you didn't think there were any stretchers. Right?  
A. No. There were no stretchers.

Q. So when you were asked if (b)(6) was given any type of mattress or pad or anything that was out in the rec pen, that would have been impossible to do?  
A. Right. Because myself, I didn't even have one.

Q. And if we're going use them, a Marine would get one before we gave one to a prisoner?  
A. Right. Well, if somebody would have had, like myself, if I would have had one, I mean, then there would have even been a possibility to give them a mattress.

Q. But that possible didn't exist?  
A. Right.



Q. When you went to the -- when you were sick, vomiting and diarrhea, you saw a corpsman. Right?  
A. Yes.

Q. You didn't see a doctor?  
A. No. I saw a corpsman.

Q. You thought you got appropriate care from a corpsman?  
A. Yes. I was hooked up to an IV and given medication.

Q. And you got fixed?  
A. Yes.

CC[MR. HIGGINS]: Can I have a second.

*Defense counsel conferred.*

CC[MR. HIGGINS]: Thank you.

#### CROSS-EXAMINATION

*Questions by the defense (Capt Folk):*

Q. I'm Captain Folk, I'm Sergeant Pittman's attorney. I want to focus your attention to the period of time that you and Major Francis were discussing being -- when Major Francis was referring to being stood up at the period of time. During that period of time, you were standing post between the two holding cells; is that correct?

A. Yes.

Q. Were you able to observe what was going on in the holding cells, what was your line of vision?

A. It was myself and another Marine actually there, so I was watching one cell while that other Marine was watching another one.

Q. Do you remember who they were?

A. No, I don't.

Q. Do you remember what cell you were looking in to?

A. The far cell.

Q. When you say the far cell, what do --

A. I mean, from the entrance of the holding facility it would go?

Q. Could you point it out on the deposition exhibit?  
A. It would be this cell.

Q. You are referring to the cell that has the little coil things?  
A. Yes.

Q. Do you recall what prisoners were detainees during that summer?  
A. No idea.

Q. Do you remember any details about what was going on in that cell?  
A. I think at that point, the (b)(6) was in this cell by himself.

Q. Okay. Were you able to get a chance to see what the (b)(6) was doing in there by himself?  
A. Sitting on the ground.

Q. Was he clothed?  
A. Yes. I think he had a black robe on.

Q. Do you know if he had flexycuffs and sandbag on him?  
A. I don't remember.

Q. Were there any other Marines in the cell with the (b)(6) during that time period, while you were on post?  
A. No.

Q. So the (b)(6) was all alone?  
A. Yes.

Q. How much time passed between the situation with (b)(6) being covered in defecation, you and Lance Corporal (b)(6) going through that process, and when you stood post outside that holding cell?  
A. How much time?

Q. Yeah. How much time passed?  
A. To be honest, I'm not.

Q. Do you think it was less than an hour?  
A. It's very possible.

Q. But.  
A. I don't remember.

Q. That's fine. Were you present when the (b)(6) was brought into the holding cell that you just described?

A. No. I don't even remember that much about that (b)(6) to be honest with you. I don't remember much about anything except this guy.

Q. You just remember at one point you were posted?

A. Yes.

Q. Do you remember approximately how long you observed the (b)(6) in the room?

A. I'd say two hours, something like that.

Q. How would you describe the situation in the camp during the time frame when you got this report that people --

A. Everyone strapped up, and everyone got their gear and headed to the positions where they were told to report.

Q. Was it calm?

A. I mean, it wasn't completely calm, it was a threat.

Q. How often did you have a situation like that?

A. That particular situation, I think once.

Q. And that one time?

A. That one time.

Q. You said that -- let me go back in time a little bit. You said when (b)(6) first showed up, you thought he was another prisoner, and your opinion over time changed as you acquired more information?

A. Yes.

Q. How long of a time period was it from -- just assuming he was another prisoner until this point in time where you started to learn a little bit more about --

A. The night that he came in.

Q. Do you remember how you found out?

A. I don't remember.

Q. And when you say bad night, was it when you were standing post or --  
A. No. When I got off post, there was some talk about what was going on, and I remember exactly what the talk was, but that it was further elaborated on the next day, after they interrogated him.

Q. After the HET Team shows up?  
A. Sure.

Q. Did you ever discuss (b)(6) with any of the members from HET Team?  
A. I, myself, didn't even speak to any members of the HET Team.

Q. Were you given any kind of opportunity to clean up after you had been involved with the moving of (b)(6) Having to take care of his clothes and everything that covered in feces?  
A. Well, I was standing post, I had a job to do.

Q. So you didn't have an opportunity to clean up?  
A. Well, I had gloves on. I think I did clean up because we have hand sanitizer there.

Q. So you -- so there was some break between dealing with (b)(6) and assuming that position you just discussed?  
A. Yes, sir.

CC[CAPT FOLK]: I don't have any other questions.

TC: Just a couple for you. Just so I'm not confused here.

#### REDIRECT EXAMINATION

Questions by the prosecution:

Q. By the time (b)(6) was in the camp, at that time, please show me with let's just use the letter "A" how the guards can be configured in as far as watching the prisoner?  
A. When it's a three-man --

Q. Correct.  
A. So you want 3 "A's".

Q. Correct.  
A. Well, this would be one, this would be two, this would be three.

Q. So let's --  
A. That's the prisoner.

Q. By the one you said was -- the three by three. So A1, that's marked at the prison cells you marked where (b)(6) was, what would that individual be doing?  
A. Watching the activity that's going on.

CC[MR. HIGGINS]: Are you talking about when (b)(6) was in that cell?

TC: Right. At that time. The time frame --

CC[MR. HIGGINS]: Time frame? Or just in general?

*Questions by the prosecution:*

Q. Tell me, what are you talking about?  
A. I'm talking about a regular shift.

Q. During that general time frame time?  
A. I'm talking about the whole time frame, when there were three guards on a post.

Q. Okay. All right. So that person, you were describing (b)(6) cell, just for clarification for the diagram, A1, what's A1 doing?  
A. A1's watching this cell. Watching the activity in the cell. Monitoring.

Q. And when he's doing that, does he have any weapons?  
A. He as an M16.

Q. What's the condition of the weapon.  
A. Condition 1.

Q. Is there a SAW in there at that time?  
A. I -- there was at first, but I believe when we went to just three men, I believe it was taken out.

Q. All right. What's A2 doing?  
A. Watching the activity of the cell.

Q. And A3?  
A. Overseeing. This is the leader, the shift leader.

Q. Well, who's watching the prisoners in the exercise yards and the holding pen?  
A. This is when there's only prisoners in these two cells.

Q. What if you have prisoners going out to the exercise yard? What would happen?  
A. If they're moving them from the cell to the exercise yard?

Q. Right?  
A. Then, this particular Marine would escort the prisoners out.

Q. So A2?  
A. A2 would escort the prisoners out to the exercise wall. A3 supervised this particular section.

Q. So the section between the two prison cells?  
A. Yes.

Q. So A1 would just continue to monitor his prisoners?  
A. Well, monitor this while also keeping an eye.

Q. Was there ever a time when prison were not monitored by a guard?  
A. No.

Q. Okay. Did you ever have an occasion where you saw prisoners fighting each other?  
A. Fighting each other?

Q. Right.  
A. No. Not that I remember?

Q. Did you ever see one prisoner hit, punch, kick another?  
A. No. They were usually friendly to each other. Most of the time, they would even share their food.

Q. Did you ever receive any instruction what to do if you saw one prisoner attacking another prisoner?  
A. I don't think specific instruction. I don't --

Q. Well, what did you think?  
A. To pull the prisoners, to separate.

Q. So.  
A. And if it were to happen in his cell, then one of the prisoners would go over here in the other room to stay here.

Q. So separate them into separate cells. Okay. As part of your 792 gear issued. You're issued a Iso Mat. Right?  
A. Yes.

Q. Did you take your Iso Mat with you to Iraq?  
A. Yes.

Q. Did you have your Iso Mat there with you at the detention facility?  
A. Yes.

Q. Part of your 782 gear issued, you're issued a pancho. Right?  
A. Yes.

Q. Did you have your pancho there?  
A. I had all my gear there.

Q. Pancho liner as well?  
A. Yes, sir.

Q. Did all the Marines that you observed have their panchos, pancho liners, and Iso Mats?  
A. I can't speak on what other Marines had for their gear.

Q. But did you see other Marines buy some mats there at the detention facility.  
A. I did see other Marines look.

Q. How a pancho is a pancho liner?  
A. Yes.

Q. You said you had a tent?  
A. Yes.

Q. Was --  
A. Every other Marine was issued a tent and every Marine issued a mosquito net?

Q. So you had mosquito nets and tents as well?  
A. Yes.

Q. Was it all the Marines using their tents?

A. Not every Marine had a tent.

Q. All the Marines who had tents at the detention facility, were they using them?

A. Yes.

Q. How were they using them?

A. To sleep in, to keep their personal belongings in.

Q. Where were the tents put up?

A. There were tents outside as tents inside.

Q. And inside meaning inside the guard --

A. Inside his actual building right here.

Q. And outside the guard facility?

A. Outside.

Q- Okay. So obviously you had concertina wire at the facility, did you have any poles at the facility?

A. Pole?

Q. Poles that you put in the ground?

A. Yes. That's what we used to wrap the wire around.

Q. Okay?

A. They weren't actual -- they weren't round --

DO: Were they engineering stakes?

WIT: Yes, sir.

DO: Thank you.

Questions by the prosecution:

Q. Did you have any larger tents other than the small tents that the Marines were using -- or were there any large tents around that facility at the time?

A. No.

Q. Um, did you -- were there any HMMWV's assigned to the detention facility?

A. No.

Q. You guys didn't have any HMMWV's?

A. No, sir.



Q. Any other type of vehicles?  
A. No.  
TC: That's all I have. Thank you.  
DO: Anything further?  
CC[CAPT FOLK]: No, sir.  
CC[MR. HIGGINS]: One second.

*RECROSS-EXAMINATION*

*Questions by the civilian counsel (Mr. Higgins):*

Q. Lance Corporal (b)(6) you testified that you labeled the excrement that came out of (b)(6) body. Right? You said a puddle was on his body, generally relaying what he was producing at that time?  
A. Yes.  
Q. Would you want a prisoner with diarrhea laying on any of your gear?  
A. No.  
CC[MR. HIGGINS]: Thank you.

DO: Let's go off the record just a second.

*The deposition went off the record.*

DO: Lance corporal, I want to thank you for you attendance here today. I really appreciate that, and I'm going to instruct and ask you not to discuss your testimony with anyone other than all the defense attorney's here, as well as government counsel, and you're free to go about your regular duties, and -- is this a drill weekend for you down --  
WIT: In Harrisburg?  
DO: In Harrisburg.  
WIT: Yes.  
DO: If you have to go back and attend any of those duties, or if you're going to get down after drill is over, but go

ahead and take care of that, but you're finished here.  
All right?

WIT: Thank you, sir.

*The deposition adjourned.*

**AUTHENTICATION OF DEPOSITION**

in the case of

Major C. A. Paulus and Sergeant G. P. Pittman, U.S.  
Marine Corps, 2d Battalion, 25th Marines, Reserve Unit, Garden  
Grove, New York.

Pursuant to R.C.M. 1104(a)(2)(B), the deposition in the foregoing  
case is authenticated by the trial counsel due to the deposition  
officer's return to reserve status.

\_\_\_\_\_  
L. J. FRANCIS  
Major, U.S. Marine Corps Reserve  
Trial Counsel  
\_\_\_\_\_

APPROPRIATELY FILED XXVIII  
PAGE 44 OF 55



UNITED STATES MARINE CORPS  
MARINE CORPS BASE  
BOX 555010  
CAMP PENDLETON, CALIFORNIA 92055-5010

IN REPLY REFER TO:  
5800  
SJA  
14 MAY 2004

From: Commander  
To: Colonel D. L. Applegate (b)(6) USMCR

Subj: ORDER FOR ORAL DEPOSITIONS ICO UNITED STATES V. MAJOR CLARKE A. PAULUS  
(b)(6) USMC AND UNITED STATES V. SERGEANT GARY P. PITTMAN  
USMCR

Ref: (a) RCM 702, MCM (2002 Ed.)

1. Per the reference, you are hereby appointed as the deposition officer in the subject cases. The Marines to be deposed are as follows:

- a. Staff Sergeant (b)(6) USMCR attached to 2d Battalion, 25th Marines, (b)(6)
- b. Sergeant (b)(6) USMCR residing at (b)(6)  
(b)(6)
- c. Corporal (b)(6) USMCR residing at (b)(6)  
(b)(6)
- d. Lance Corporal (b)(6) USMCR residing at (b)(6)  
(b)(6)
- e. Lance Corporal (b)(6) USMCR attached to 2d Battalion, 25th Marines, (b)(6)
- f. Lance Corporal (b)(6) USMCR residing at (b)(6)  
(b)(6)
- g. Lance Corporal (b)(6) USMCR attached to 2d Battalion, 25th Marines, (b)(6)
- h. Lance Corporal (b)(6) USMCR attached to 2d Battalion, 25th Marines, (b)(6)
- i. Lance Corporal (b)(6) USMCR attached to 2d Battalion, 25th Marines, (b)(6)
- j. Lance Corporal (b)(6) USMCR attached to 2d Battalion, 25th Marines, (b)(6)
- k. Lance Corporal (b)(6) USMCR attached to 2d Battalion, 25th Marines, (b)(6)  
and,

200 EXHIBIT 1  
(PROSECUTION)  
APPELLATE EXHIBIT X4v111

Subj: ORDER FOR ORAL DEPOSITIONS ICO UNITED STATES V. MAJOR CLARKE A. PAULUS  
(b)(6) USMC AND UNITED STATES V. SERGEANT GARY P. PITTMAN  
USMCR

1. Lance Corporal (b)(6) USMCR attached to 2d  
Battalion, 25th Marines, (b)(6)

2. This action is necessary because these Marines may become material witnesses in the subject cases and their testimony preserved should it become necessary. These depositions should be completed no later than 10 June 2004. If additional time is necessary, submit a written request for an extension. The depositions will be recorded by a court reporter for further use in court-martial proceedings.

3. By copy hereof, trial and defense counsel currently detailed in the subject cases will remain detailed for the oral depositions.

*M. L. Hampton*  
M. L. HAMPTON

Copy to:  
TC (Maj Francis)  
DC (Capt Jasper/Capt Folk)  
SJA, 1stMarDiv (Rear)



UNITED STATES MARINE CORPS  
MARINE CORPS BASE  
BOX 555010  
CAMP PENDLETON, CALIFORNIA 92055-5010

IN REPLY REFER TO:  
5800  
SJA

11 MAY 2004

From: Commanding General  
To: Colonel D. L. Applegate (b)(6) USMCR

Subj: ORDER FOR ORAL DEPOSITIONS ICO UNITED STATES V. MAJOR CLARKE A. PAULUS  
(b)(6) USMC AND UNITED STATES V. SERGEANT GARY P. PITTMAN  
USMCR

Ref: (a) RCM 702, MCM (2002 Ed.)

1. Per the reference, you are hereby appointed as the deposition officer in the subject cases. The Marines to be deposed are as follows:

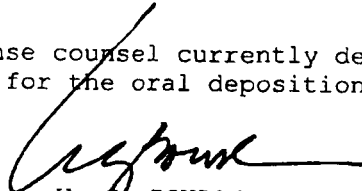
- a. Major (b)(6) USMCR attached to 2d  
Battalion, 25th Marines, (b)(6)
- b. Sergeant (b)(6) USMCR residing at (b)(6)  
(b)(6)
- c. Sergeant (b)(6) USMCR attached to  
2d Battalion, 25th Marines, (b)(6)
- d. Hospitalman Second-Class (b)(6) USNR residing at  
(b)(6)
- e. Lance Corporal (b)(6) USMCR attached to 2d  
Battalion, 25th Marines, (b)(6)
- f. Lance Corporal (b)(6) USMCR attached to 2d  
Battalion, 25th Marines, (b)(6)
- g. Lance Corporal (b)(6) USMCR attached to 2d  
Battalion, 25th Marines, (b)(6)
- h. Lance Corporal (b)(6) USMCR attached to 2d  
Battalion, 25th Marines, (b)(6)
- i. Lance Corporal (b)(6) USMCR attached to 2d  
Battalion, 25th Marines, (b)(6)
- j. Lance Corporal (b)(6) USMCR attached to 2d  
Battalion, 25th Marines, (b)(6)

2. This action is necessary because these Marines and one Sailor may become material witnesses in the subject cases and their testimony preserved should it become necessary. These depositions should be completed no later than 10

Subj: ORDER FOR ORAL DEPOSITIONS ICO UNITED STATES V. MAJOR CLARKE A. PAULUS  
(b)(6) USMC AND UNITED STATES V. SERGEANT GARY P. PITTMAN  
USMCR

June 2004. If additional time is necessary, submit a written request for an extension. The depositions will be recorded by a court reporter for further use in court-martial proceedings.

3. By copy hereof, trial and defense counsel currently detailed in the subject cases will remain detailed for the oral depositions.



W. G. BOWDON

Copy to:  
TC (Maj Francis)  
DC (Capt Jasper/Capt Folk)  
SJA, 1stMarDiv (Rear)

TC: I'm sorry.

IO: Hold on for one second. This first witness by the government is a witness testifying via telephone. I assume there's no objection to the form of the testimony.

CC: No, sir. In fact, defense has indicated that we'll take these witnesses any way we can get them.

IO: We can get them. All right.

Major (b)(6) U.S. Marine Corps Reserve, was called telephonically as a witness by the prosecution, was duly sworn, and testified as follows:

*DIRECT EXAMINATION*

*Questions by the prosecution:*

Q. Can you please state your full name for the record.

A. (b)(6)

Q. And can you spell your last name.

A. (b)(6)

Q. And what city and state do you currently reside in?

A. I live in (b)(6)

Q. Now, sir, you are a major in the United States Marine Corps Reserve?

A. Correct.

Q. Can you please start off, sir, by giving just a brief synopsis of your military background to the investigating officer.

A. I was commissioned in 1990. I attended TBS, Infantry Officer's Course, and then was assigned to 1st Battalion, 7th Marines. I served with 1st Battalion, 7th Marines until '93. I moved on to 7th Marines and then 3d Light Armored Reconnaissance Battalion, at which time in January of '95, I got off active duty and joined 2d Battalion, 25<sup>th</sup> Marines as a platoon commander. I worked as a platoon commander in Golf Company, 2d Battalion, 25<sup>th</sup> Marines in New Jersey, and most recently served as the 2d Battalion, 25th Marines Operations Officer and currently serving as the 2/25 XO.



- Q. Sir, how many total years of active duty service did you put in?
- A. Let's see, I'd say seven years.
- Q. And that was all as an infantry officer?
- A. Correct.
- Q. And what do you do in your civilian capacity? What is your job?
- A. I am a (b)(6)
- Q. I want to talk now about the activation of 2/25 post-9-11, if you will.
- A. Okay.
- Q. Can you just briefly explain what activities 2/25 has undergone since 9-11.
- A. Obviously, the events of 9-11 speak for itself. Most recently after that we continued our annual training as reservists. Sometime in around November, we started, the members of the staff, started hearing that the battalion was going to get activated, for what we still didn't know; and then in December of 2001, the staff was activated. We came in approximately December 17<sup>th</sup> 2001, and then we found out at that time we were going to be heading down to Camp Lejeune for operational tempo relief and possibly further missions.
- Then mid to end January, the remainder of the battalion was activated and we departed Camp Lejeune, North Carolina, at which time we just started conducting the operational tempo relief which was -- they had formed the 4th MEB down there and we kind of filled in for the battalion that was taken away from the 8th Marines. There was stuff, you know, normal training. We went to Bridgeport for the active duty course. We went down to Fort Bragg for Rolling Thunder, you know, some of the large events. The following week we came up to New York for Fleet Week and then other than that -- those charge events, we basically developed a training plan and a training schedule for the year while we were at Camp Lejeune.
- Q. And you stayed there for an entire year?
- A. That's correct. We got there in January, and we departed one year ago this week.

- Q. You were deactivated at that point in about December of 2002?
- A. Correct. We were deactivated in December -- last year, December of 2002, and then basically up here for the holidays, and then in January I started getting calls -- as you were. I turned over -- at that time I was the S-3A. Once we came back here, I became -- that's when I became the S-3 for the battalion. We went down to Camp Lejeune to meet with the Colonel Garza and the 6th Marines regimental staff to start forming an integration plan, because then there was the talk again that we were going to be reactivated for the upcoming -- the upcoming war in Iraq.
- Q. Were you reactivated?
- A. Then we were reactivated in March of this year, 2003.
- Q. Now, March of 2003 when you were reactivated, what was your position within the battalion?
- A. I was the S-3, the operations officer.
- Q. And what was Major (b)(6) position within the battalion?
- A. Major (b)(6) came into the battalion and we filled him in as the battalion gunner within operation's section, which is generally -- you know, he was responsible for a lot of the live fire and the ranges that were -- you know, if we did any training. As everyone else in the operations section any other projects that were to come up at any given time.
- Q. Now let me take a step back.
- Was Major (b)(6) with the battalion during the year that you had been activated and working in Camp Lejeune?
- A. That's a negative. He was not. I believe -- he probably has the dates better, but I believe that Major (b)(6) came into the battalion in the January, February timeframe. I don't remember meeting him, I believe, until February of 2003.
- Q. Now I want to talk to you about March of 2003, when the battalion was reactivated and you were located at Camp Lejeune. Okay?
- A. Okay.
- Q. What was the training that the battalion underwent?
- A. We -- one -- based on the colonel's guidance, the

battalion commander's guidance, we concentrated on NBC operations and training, and one of the heavy training things was -- it's called EMP, the enhanced marksmanship program, which is a new, live-fire course that the Marine Corps has come up with here in the past couple of years, which is basically a quick-fire and short-range shooting. So those were two of the main things.

We were not really sure of how long we were going to be at Lejeune this year when we got reactivated, so we developed a training schedule for, you know, like a week at a time, because we only felt we were going to be at Camp Lejeune for seven days; and then as we progressed and stayed there longer. We continued with this enhanced marksmanship training and the NBC training, hikes, conditioning hikes, we conducted a CAST, which is a combining arms staff trainer down at Camp Lejeune, which is something that exercises the staff non-fire support operations and we based it on a scenario in Iraq.

Q. Let me ask you this, sir: What was the primary mission that you were getting ready for the upcoming deployment?  
A. The primary mission?

Q. Yes.  
A. I believe it was to -- for combat operations in Iraq moving from south to north, up towards Baghdad because we weren't really certain on what was -- combat operations where we [sic] movement to contact, attack of a fortified position, urban operations, military operations in the urban environment, as well as, you know, moving up collecting the EPW's as we moved and then passing them off. Those were the main things that we were training for, because that's what we trained for as an infantry battalion. Those are the general missions of the infantry battalion, you know, attacking, setting up defenses, although in this scenario we planned on -- from what we were hearing that we were going to be moving from south to north towards, you know, towards Baghdad and at other points north.

Q. Let me interrupt you, sir. Now, you indicated that EPW collection would be one of the functions of the battalion potentially.  
A. A secondary mission, yes.

- Q. Okay. How was that -- what training did the battalion receive when at Camp Lejeune during that month in March, if any at all?
- A. Well, external -- external from the battalion, none, meaning from higher. We didn't receive any training from higher within the battalion, it was just, as in our SOP, it's -- as EPW's are found or from -- either from us at the company level -- an infantry company, one of the companies, you know, encountered that situation -- the SOP, you know, they collect them up, it goes off to the battalion, and we will process them to be handed off to higher. In this case we thought it would be an FSSG unit, as that's pretty much the way the Marine Corps works; the FSSG is in charge of these EPW's as they are processed.
- Q. To be more specific, was there any training given to the Marines of the battalion, or the battalion, as a whole with respect to treatment of the EPW's.
- A. They -- the companies -- as a battalion, no. It was something that was passed down to the companies to conduct at their level, and in talking with the company commanders they were given, you know, the half-hour, one-hour, whatever class on the EPW handling.
- Q. And at that class is something called the five S's and a T taught?
- A. Correct.
- Q. And do you know what those S's are, sir?
- A. Yes.
- Q. Is one safe -- safeguard?
- A. Yes sir, speed, safeguard --
- Q. And what specifically does safeguard refer to?
- A. Capturing units will determine whether it is necessary to bind captives. Captives should be blindfolded when being transported. The capturing unit, and I'm sorry, I apologize, I am reading right from the SOP right now.
- Q. Okay.
- A. The capturing unit is responsible for providing an adequate number of guards to preclude any possibility of escape.
- Q. Let me ask you to put the SOP down for a second, sir?
- A. Okay.

- Q. Here's my next question: Were the Marines taught whether or not it was appropriate to torture EPW's or use excessive force with them?
- A. I can tell you that Marines have never tortured anybody, not on 2/25, and as far as excessive force, the Marines are taught that deadly force is authorized when they feel that themselves, other Marines, or their lives may be in danger.
- Q. Now when did 2/25 actually punch out for Operation Iraqi Freedom?
- A. Do you want me to tell you when we got to Iraq basically from Kuwait, or when we left Lejeune, that -- I can talk to you about that or I can talk to you about the -- basically when we got to Iraq and when we started doing our operations in theater.
- Q. When did you actually get to Camp White Horse outside of An Nasiriyah?
- A. Okay. The initial elements of the battalion got there, I believe, on 2 April 2003, the reminder of the battalion started coming up in increment. We probably had the battalion full up there by the 4th or 5<sup>th</sup> of April, if I remember. A lot of this stuff -- understand that half of it was secret material so I don't have the exact secret material and I don't have those specific dates right now. 2 April, sometime until around the 4th or 5th of April, is when the battalion was really operating at full capacity up in An Nasiriyah and White Horse area.
- Q. Now, when you got the full battalion there in 4 or 5 April, around about that time, what was the mission for 2d Battalion, 25<sup>th</sup> Marines, at that point?
- A. We got the mission from the 15<sup>th</sup> MEU, who we were attached to in An Nasiriyah, and we were basically -- the main mission was security and stability operations in An Nasiriyah which was patrolling, providing a safe, you know, a safe environment in that city. We guard -- we had to do bridge security, and at traffic points as well where we had to set up road traffic points and road blocks to deter travel -- locals from travelling across the bridges in An Nasiriyah. There was five main bridges, and one of the MSR's there was one of the main ones being used. It was a theater route, so we had to provide security on that one bridge and then a bridge around 20 clicks to the west of the city, which was another main route headed towards the north.

Q. Describe for me where Camp White Horse was in relation to An Nasiriyah.

A. It was -- it was about -- about four miles outside of the city, just outside of the city.

Q. And who was located at -- what other units were located inside Camp White Horse?

A. At various times -- to begin with, the 15<sup>th</sup> MEU was there. They had the MSSG-15, which was the service support group for the MEU, they were located with us there. A short time later in April, the elements of the 10th Marines came to White Horse, the SeaBees at NM Seabee-7 -- a detachment from NM Seabee-7, a Seabee unit, was located there with us.

Q. Was it a big camp?

A. I'm sorry. Say that question again.

Q. Was it a large camp in size?

CC: Sir, if I --

IO: Hold on, Major.

WIT: Yes, sir.

CC: If I could, could we have some sort of a definition of what large is. Large relative to Camp Pendleton? Large relevant to something?

IO: I'm sure Captain McCall is going in that direction and will provide us some scale.

Right, Captain McCall?

TC: Did you hear that, Major (b)(6) [REDACTED]?

WIT: Yes, I guess, sir, and, ma'am, if this answer is inappropriate, the amount of Marines soldiers and/or Sailors that were located -- that were in this group at White Horse -- it was a large number of Marines for the size of the camp. Does everyone understand that? It was a big area but -- at any given time there was a lot of Marines, soldiers, Sailors, and Airmen that could be packed in there living their.

IO: Okay. Major (b)(6) [REDACTED], this is Colonel Gallo. That's still a little vague in my mind. Can you give us an answer in

terms of, you know, square miles, yards, kilometers, the --

WIT: I'm sorry. I think I understand where you're going.

There was no square mileage, it was -- the confines of Camp White Horse from north to south, and east to west -- I'd say from north to south, maybe, including the airstrip that was within the camp, maybe 400 meters both north to southeast to west. That was as far reaching as it would go.

Q. And was the camp north, southeast, or west of An Nasiriyah?

A. I believe it was south -- let me try to put a visual on this camp. I believe it was southeast of the city.

Q. Now at some point was the battalion tasked with running an EPW facility?

A. The battalion was -- let me -- I'll understand if you want a different answer, but let me try to explain it from the beginning. Obviously, if everyone would understand that it was a very fluctuating situation hourly -- not only daily but hourly.

Initially, we were told, you know, guard the EPW's/detainees, get assistance -- and this is the way it was worded in the order from the 15<sup>th</sup> MEU -- get assistance from MSSG-15 as needed. Okay. So that's the way the order -- and await processing. When it started it was kind of -- the way that this process was going to work was we took these guys in -- or the 15<sup>th</sup> MEU was to say capture a group of individuals, bring them into the White Horse facility. They were blindfolded, bound, and so on, and then 2/25 Marines, which generally consisted of the H&S Marines, were guarding them. Okay. It literally started just as they got off the truck and then we said, well, this looks like it is going to become -- it is going to be more occurring.

Q. Let me ask you -- let me stop you there.

A. Okay.

Q. Let's see if we can break it up into smaller parts. So the first time you got an order it was from the 15<sup>th</sup> MEU. Is that correct?

A. Yes, that is correct.

Q. Now, specifically, who from the 15<sup>th</sup> MEU provided the battalion with the order?  
A. Lieutenant Colonel Greg Olsen.

Q. Okay. And --  
A. He was the operations officer for the MEU.

Q. All right.  
A. That's who I reported to as the 2/25 S-3.

Q. What was the order? Was it a verbal order or was it a written order?  
A. I received a written -- I received both. I received it verbally and then -- you know, they were big on giving the verbal order and then we asked for them in writing; so then they did give them to us in writing.

Q. All right.  
A. So the answer is both. I have both. I have a secret order, and I also received it verbally, which I wrote down in the book.

Q. Now was this around the beginning of April?  
A. Yes, sir, it was -- Yeah, it was right around -- Yeah, it was 2 April actually because I was the first one up in An Nasiriyah --

Q. Okay.  
A. On 2 April is when I first received it.

---

Q. So you get the -- you get both the verbal order and a written order from the 15<sup>th</sup> MEU in the beginning of April. Now were there EPW's being held at Camp White Horse at this time?  
A. Negative. Negative. They didn't -- they didn't really start arriving until probably a week later, and once again, I don't have official documentation stating that, but it wasn't something like we were sitting around waiting for them, it was, you know -- understand that it was kind of a be prepared to, you know, it wasn't something that was definitely happening. We -- we were under the anticipation that there may be a lot. We may start receiving a lot of these guys that we would -- in my mind, it was going to have to guard them until the FSSG came and picked them up.

Q. Okay.  
A. It didn't start happening until like a week later.



- Q. Now, you get the -- you get the order around the 4th or 5<sup>th</sup> of April. When is the first time that the EPW's or detainees are brought to Camp White Horse for 2/25 to take initial control over?
- A. I think it was -- Yeah, I just said it was -- it was probably not more than but around a week from the time I received the order. I remember being in the COC, and at that time our COC was right near the entrance of White Horse. I remember seeing it, this, and I didn't -- I didn't know what it was and somebody came in and said there's eight EPW's/detainees out here, sir, and you know, we have to guard them.
- Q. Now prior to that time, had you started, pick who the OIC of this detachment would be, or did you even name a detachment? What steps had you as the S-3 been taking with the battalion to prepare for this?
- A. We -- I did not name anybody at the time.
- Q. So was it not until those EPW's or detainees first came to White Horse about a week after you got that order that the battalion started to move towards selecting a group of Marines to --
- A. Correct. Correct. You mean to actually develop, like, a team that was responsible for them, that's correct. It wasn't something that we said, okay. Let's have this group of guys ready for when they come in. There was guards up at White Horse at the time, that's what we would use for the guards and the initial person that we put in charge of this group was Staff Sergeant --
- Q. (b)(6)
- A. Staff Sergeant (b)(6) he was the initial -- he was the initial person responsible for it.
- Q. Now when these -- this first set of EPW's came to White Horse, where were they placed?
- A. They were -- still they remained outside literally curbside. Camp White Horse was the old Iraqi 11<sup>th</sup> Division headquarters, so it was a military camp and there was a lot of these brick buildings. These EPW's got off the truck, were guarded and remained blindfolded, and a couple of hours later they didn't go anywhere, they stayed right where they were and then I believe that the 15<sup>th</sup> MEU HET guy explained to us that they were going to be transported somewhere else, and then in a short period of time, and then within -- within a few hours a bus, an actual, you know, bus came

and picked these guys up, the 15<sup>th</sup> MEU and the HET guys went on the bus and these guys disappeared.

- Q. Now, after that first incident, when was Major (b)(6) brought in to the fold, in terms of being tasked with this issue of EPW's?
- A. I understand. I think that I'll explain it first and try to give you a timeframe. But once we realized that this was going to be happening on a more frequent basis, the staff of -- mainly the XO and the battalion commander and myself, you know, decided, hey, we are probably going to need an OIC of this just to oversee it to make sure, you know, that it was run properly. Basically, someone to report to me so that I could report to higher what the situation was and I think that was probably another week after -- after that first group came in. If I'm way off on that Major(b)(6) or somebody please let me know. I think it was right around the week after that.
- Q. Now, why was Major (b)(6) selected?
- A. Major (b)(6) was the battalion gunner. The volatile situation in Iraq at the time, we had people being designated for different jobs. My S-3A was -- is a (b)(6) (b)(6), we put him with the local police to start getting to work with the local An Nasiriyah police, I had another officer that was doing that. I had an officer who I was put in charge of information operations, and Major (b)(6) as the battalion gunner -- there was not a lot of live fire training going on while we were there, so that freed him up from his assigned duty to take over this mission.
- Q. Now, was he staffed with guards when he was given this assignment?
- A. Say that again.
- Q. Was there a staff of guards that were provided to Major (b)(6) when he was given this assignment?
- A. I believe that was one of the things to make sure that he got with the H&S Company Commander and XO to make sure that they had built up this team, so it was kind of something that we, if I'm not mistaken, to develop on his own. You know, that had a group of guys initially that were the guards, and then I know the H&S Company Commander worked with him on that. Hey, here's who's available to do this and as stated earlier -- because initially, as Camp White Horse as this perimeter guards

understand, that we were -- really a portion of 2/25  
Marines for that and then as --

Q. For the perimeter?

A. Yes, for the perimeter security. That means there was  
Marines for the perimeter security and then Marines for  
the guard of the prisoners. As units started leaving,  
like, the 15<sup>th</sup> MEU, the responsibility of this  
perimeter security of White Horse fell completely on  
2/25. The point I'm making is that it chewed up a lot  
of your manpower. From now on, we had to make sure we  
had enough manpower for the 24-hour security --  
perimeter security and for the EPW detainee guards.

Q. Now was the facility ever designated as a holding point  
for the EPW's or the detainees?

A. Yes, they -- they picked a building. I remember  
Major (b)(6) coming in. They picked a building. It  
was not being used and Major (b)(6) -- so that they  
used this building for when the EPW's came in the  
vehicles drove right to the building from the east so  
that when the EPW's got off of the -- any of the  
vehicles that they were being brought in on that, they  
could get right off the vehicles and go right into the  
building as opposed to having them, you know, walk  
around anywhere or, you know, having them go to here or  
there, there was a building and an area around the  
building that was designated as the EPW/detainee holding  
facility.

Q. All right. So now the battalion -- you were given the  
order, you had some EPW's come in, you selected  
Major (b)(6) as the officer that would be in charge of  
this facility. How many guards did you assign? Do you  
know, to the facility?

A. I'll guess based on my best estimate here, and I believe  
it was -- I think it was somewhere around 24. I think  
that was the number of guards that -- I mean, we gave  
him what he needed and we were told that's what was  
needed. Major (b)(6) being the EPW guy and then  
Major -- being the H&S Company Commander, it was kind of  
a three-way thing on, hey, I need this and they  
definitely came through. We did not have the line  
companies or the weapons companies to provide us these  
guards based on the mission of the patrols -- of  
patrolling the security mission. So if I'm not  
mistaken, and once again if somebody disputes then I'll  
take another look at anything that I have, but I believe

it was, you know, low 20's, 24, around right about there.

Q. Now, you said those Marines came from H&S Company.  
A. Yes, sir.

Q. How -- who were they and how were they selected, just generally speaking?  
A. The -- the higher -- the more -- let me try to figure out how I'm going to say this.

The Marines that were in more of a position of responsibility, meaning more of I would say management level of it were selected based on -- I mean, a reserve battalion -- we took a couple of guys that were

(b)(6)

for the United States, and we tried to get as many of those guys that we had in the battalion to do that; and then after that -- with that being said, after that we selected guys who -- I don't want to say their primary function was not important, but, like, the cooks. We were not preparing hot meals for the Marines over there during this time, so we took a lot of the cooks who were on security detail who might have been in the EPW realm as well, but we looked -- first looked at the guys who worked at the detention facility, just basically because they knew better than anybody how to handle these guys.

Q. All right. So now that there is -- you have a facility, an OIC, a guard force, is the camp starting to receive a larger flow of prisoners or of detainees?

A. Well, I'd say the An Nasiriyah area -- it wasn't a larger flow, it was -- it was just more amenable to the flow that we were receiving, meaning, guys weren't getting off, sitting on the curb, and us wondering what the heck are we going to do with them. Now there was a system in place of, you know -- E Company -- as an example, E Company has four guys that are suspect in a situation and asked to be questioned by the HET teams. They are brought in. You know, the system is they are brought in on the trucks blindfolded, or the HMMWV's; however, they were brought in, blindfolded, they go right in to the facility, they are processed, until at which time the interrogation teams came in and questioned them. Let me -- the way it initially started -- and I guess the best way to put this is White Horse Detention Facility was like a warehouse, but 2/25 wasn't responsible for the goods in the warehouse.

We just guarded them. There was the 15<sup>th</sup> MEU, HET teams drove those guys, drove, you know what we did to those guys because they were, you know, the ones who were going to question them for further intelligence; and, you know, the SOP says that, you know, these guys are valuable, but it wasn't -- the 2/25 responsibility was to guard these guys and, you know, everything that goes along with that, which is making sure that they got proper food, shelter, and water.

Q. Treating them humanely?

A. Correct, absolutely, and I'll go further -- one step further. For him to say that the -- at the time when the 15<sup>th</sup> MEU was leaving and the responsibility was on us, we were going to put this responsibility to the 10th Marines so that we could conduct or mission in An Nasiriyah better, which would have been security operations. As the 10th Marines went in there, and there's no shot against the 10th Marines, they went in there, they looked at the facility, they looked at the way things were being run and they said we cannot do this as well as, you guys are doing it. We ask that you maintain this. We'll do anything else, but this is something that they just didn't have the extra -- they are an artillery battalion. They didn't have the expertise to run one of those facilities. So we maintained the responsibility of this.

Q. Now, this holding facility, as the S-3, was it your understanding -- what would happen to the EPW's ultimately that were brought to Camp White Horse Detention Facility? Would they be moved on to another facility? Would they be released? What was the understanding?

A. Actually yes, sir, to both of those. My personal understanding was that once they are interviewed by the HET team, they were going to be sent -- processed further to -- there was a facility at Talil Air Base, which was another six miles away close. It was run by the U.S. Army. They would be processed there, yes this guy has valuable intelligence, or the HET team would determine this guy isn't worth anything. He doesn't know anything, he's a borderline, you know, criminal and then released. You know that order was given at the beginning by Colonel Waldhauser, the MEU CO, and then when the MEU went away, Regimental Combat Team 2, Colonel Bailee, the regimental commander, was the one who made the decision, no EPW's could be released unless

he gave the go ahead.

I could say that the problems started to occur when as opposed to said name Iraqi, possible war criminal turned from possible war criminal to this guy beat up his wife, you know, in a domestic dispute, and the understanding was now we were starting to get not only -- guys possible war crimes but now criminals just your average, everyday --

Q. And that was designated -- and the designation of whether a person was a combatant, a detainee, or a criminal, or an alleged criminal, for example, would be by the capturing unit that brought the EPW to the facility?

A. Yeah, that's correct. You could -- if it was -- if a unit, whether it was the MEU or RCT -- one of the RCT units, or 2/25 got intel on said name Iraqi who lives at such and such a place, he could be responsible for war crimes -- you know, and that was determined by the intel community, and we went and did a raid on it and captured them then Yeah, okay. We arrested this guy on the suspicion of possible war crimes in An Nasiriyah or elsewhere. There was Iraqis that were wanted throughout the country, and they went to various parts of the country, and as you probably seen on TV, they were all over the place, so I mean, there was some that were in the An Nasiriyah area that we were hunting down, but I'd say that was one of the problems with the detention and the EPW facility got to was when we had to start taking in criminals. Until the An Nasiriyah police and the engineers established a jail cell.

Q. Okay. Now, RCT, first of all is a regimental combat team?

A. Yes, sir.

Q. All right. Now, sir, what was the interaction after the 15<sup>th</sup> MEU left with these HET teams -- they came from the 15<sup>th</sup> MEU. Correct?

A. Yes.

Q. And they were -- that's the human exploitation teams?

A. Correct.

Q. And their primary function was to perform interviews or interrogations of --

A. Correct. Yeah, they -- they basically did the

interviews of these individuals and made determinations.

- Q. Now, what was the interaction then with the HET teams and the battalion, like yourself for example, as the S-3?
- A. Well, when they fell under the 15<sup>th</sup> MEU and when they fell under the RCT at the higher headquarters, there was not much except for the act of when you find somebody, call us, and we'll get there as soon as we can. So you know, like I said, this goes into the warehouse where we guarded this -- you know, the goods were in the warehouse -- the goods being the detainees, but we didn't -- they weren't the 2/25 goods.

Does everyone understand that? They were not our -- those individuals were not our responsibility, they were only our responsibility to guard. Now with that being said, when the RCT and the 15<sup>th</sup> MEU were all gone and it was 2/25, Task Force 2/25, under 1st Marine Division, the goods in the warehouse now belonged to us. Okay. And as did -- the HET reported to me and Colonel Murphy that matter -- actually report to Colonel Murphy, me being the operations officer.

IO: Captain McCall. Hold on, Major (b)(6)

It's now about 1015. We've been going at it almost steadily since 8. We are going to take a short, 10-minute recess at this point.

WIT: Okay. Yes, sir.

IO: So either hang on the line or we'll give you a call back in 10 minutes.

WIT: Sir, the best thing -- this is a cordless. How about a call back so I can put it on recharge and make sure we don't lose out here.

IO: That would be advisable.

WIT: Okay.

IO: We'll stand in recess for about ten minutes.

The Article 32 investigation recessed at 1022, 17 December 2003.

The Article 32 investigation was called to order at 1027,  
17 December 2003.

IO: This investigation will come to order. All parties who were present when the court recessed are once again present, with the exception of Captain Francis who is not in the courtroom. His assistant trial counsel, accused, and his counsel are both present.

Captain Francis has now entered the courtroom.

The witness was called telephonically and reminded of his oath.

Q. Now, I think that we left off at the interaction between the HET teams and the battalion and the facility at Camp White Horse.

A. Okay.

Q.. Can you just briefly again -- if HET wanted something done to a prisoner or they wanted to interrogate a prisoner, how did that process work itself out?

A. Well, what happened was -- just for an example, an EPW X, comes into the facility suspected of whatever -- whatever crimes or whatever involvement in something, immediately upon -- it didn't matter what happened if it was the middle of the day or the middle of the night, we get the call, I get the call at the battalion CP and then I think actually the company -- I was informed of it but the company that actually had the radio frequency of the HET teams., so meaning if I was in E Company and we captured a guy, I would inform my company commander, and the company commander or somebody on the company staff would call the HET team to go to the White Horse location to do their interrogation to minimize the amount of time that the EPW or detainee would be held there so that's how it worked. I mean, we held them.

Q. So the capturing unit would call ahead to both the battalion letting White Horse know that an Iraqi EPW detainee or war criminal or criminal would be counselling to the facility, and they would also call the HET team?

A. Right. Because the reason is -- the reason we wanted to know, and White Horse wanted to -- you know, the EPW facility needed to know, was so that the vehicle didn't show up with this detainee and everyone was surprised. So usually it would be a half hour to an hour lead time, hey, we've got a guy suspected of whatever crime and we



are bringing him over to White Horse. Roger that. Bring him over and we'll be waiting for him. That way from what I understood -- and this was getting down to the operating level of it, but then Major (b)(6) would be notified or Staff Sergeant (b)(6). I don't know, and say okay we need to get a couple of more guys when this vehicle comes in to get those guys into the facility and place a guard on them if there was no one in the facility.

Q. Now when Major (b)(6) was in control of the detention facility, did he ever come to you with problems he was experiencing or requesting any more bodies or things of that nature?

A. The only thing I recall was when the numbers got too high and Major (b)(6) would express concern. Hey, sir, listen, we normally have -- and it wasn't a manpower thing. Like we gave the detention facility whatever manpower it needed, to the point where, we would have to start going to the company to get the men for guards and to do the perimeter security; but the only concerns that Major (b)(6) brought to me was -- that I recall was hey, sir, listen we have -- the facility we can't handle more than -- once again I don't -- the Number 24, you know, rings a bell. We can't handle more than -- we just don't have the space and the manpower to handle more than that many.

Q. Now did you ever have the opportunity to -- well, let me ask you this: Where were you physically located?

A. From the facility.

Q. From the facility?

A. Okay. Two answers to that. The first answer is the first battalion CP that we had at White Horse which was, I don't know, 150, 200 yards away; and the second answer is, then to a place we call it a big house which was the follow-on battalion CP. We actually -- when the MEU pulled out and battalion landing team 2/1 moved out, we took over the house that they were living in for our battalion CP. I wanted to be close to where our operating forces were, and we left our logistical and EPW facility up at White Horse.

Q. Okay. Now, did you ever physically go from your location down to Camp White Horse -- to Camp White Horse Detention Facility and look around it?

A. A couple of times.

Q. How many total times did you do that?  
A. I would say not more than -- not more than four or five.  
That was right about that number.

Q. Now, what was --  
A. About five times total I would say.

Q. What was the purpose of your visit, sir?  
A. The first one was to see obviously, hey, which building are they holding these guys in. I wanted to see where we -- you know, what building we identified so that I knew where they were. The second time was, to take the MEU commander, Colonel Waldhauser, to view the facility so he could take a look around, and then after that and I know getting the word from I believe Major (b)(6) and Major Paulus. We didn't need to visit there all the time based on -- it was just not good to have a lot of people coming in and out. It would attract a lot of people coming in and out.

It was kind sensitive that we were -- the area that we were holding the prisoners.

Q. Of those four or five times that you went down to the facility, how many of those were when Major (b)(6) was in control of the facility?  
A. I would say if it's five, it's four of the five. I only went there -- after a while it wasn't a high prior to keep visiting the facility.

TC: One second, sir. There's an objection.

CC: I didn't understand that last answer. It was -- I got the question: How many times while (b)(6) was there, but I completely didn't understand the answer.

WIT: Four. I'd say four, ma'am.

IO: Major Powers.

WIT: Yes.

IO: This is Colonel Gallo. You could probably do us a big favor when answering questions if, one, you listen to the question and try to answer it precisely without volunteering a lot of additional information even though it may be relevant in your own mind to help explain. Let's leave it up to the lawyers to bring out the

information that they think is relevant and necessary for their case. All right?

WIT: Yes, sir.

IO: Okay. And that also will help expedite the proceedings somewhat.

WIT: Okay, sir.

Q. Now, sir, you indicated that Colonel Waldhouser, the MEU CO, was with you. How many times was he with you when you visited the camp?

A. Once.

Q. Okay. What did you see? How was the camp running? How was it operating?

A. It seemed to be running very well, and in my opinion, professional. It was well organize and well run.

Q. And did Colonel Waldhauser note any discrepancies with the camp?

A. No, Colonel Waldhauser pretty much -- the reason I say that is that's what he said. I mean he echoed -- this looks great. There was directions on what the Marines guarding the prisoners wouldn't do posted. There was two different rooms I believe to distinguish between possible EPW's and the other one was for other crimes such as robbery or anything else like that so it was being run professionally.

Q. Now -- one second.

The trial counsel conferred.

Q. There was a change over between Major (b)(6) and Major Paulus at one point. Correct, sir?

A. Correct.

Q. Okay. Can you explain to me why Major (b)(6) was pulled as the OIC and Major Paulus replaced him?

A. The reason -- the main reason was the hostilities were over. The battalion commander expressed concern about Marines conducting live-fire training in and around the area, and we now had to move forward and establish a live-fire range where the Marines would train.

Major (b)(6) was the best individual in the battalion for that, which was his primary purpose coming in -- as he came into the battalion, so Major Paulus had been working in H&S. He had been working, I believe, over in the area as well, but we had -- we identified Major Paulus to do the mission and take Major (b)(6) back. We started the live-fire range, and he supervised the conducting of that live fire.

Q. Do you remember when that occurred? What timeframe?  
A. Oh, I'm not mistaken, it was in the June timeframe -- early June. It was about a week before the incident occurred.

Q. Okay. The week before there was a death in the camp later on?  
A. Correct.

Q. And Major (b)(6) was relieved approximately a week before that incident occurred?  
A. I believe so, yes.

Q. And once he was relieved, did he have anything else to do with the camp?  
A. The detention facility?

Q. I'm sorry. Yes, the detention facility?  
A. He did not.

Q. All right. Major Paulus was in control at that point?  
A. Yes, sir.

IO: Major Powers, Colonel Gallo, I have a question: The relief of Major (b)(6) wasn't due in any way because of unsatisfactory performance. It was primarily because he was needed elsewhere.

WIT: That's correct, sir.

IO: To perform other more vital functions?

WIT: That's -- yes, there was never any wrongdoing ever identified with the holding facility, you know, that's a definitive statement. There was never any wrongdoing or problems occurring as the detention facility until the death.

IO: Thank you.

TC: Just a couple of more questions, sir.

Q. You noted -- you indicated there were rules posted in the facility itself?

A. Yes, sir.

Q. Did you see those rules?

A. I saw them and browsed over them. I can tell you -- yes, I did; I did see them.

Q. What was the nature of the rules?

A. It was my understanding that the rules basically talked about what to do with the EPW once he got off the vehicle, the process of getting him into the facility, which was the search; basically the five S's, the signs themselves were -- they were in line with the five S's that we talked about in the SOP. When -- I believe there was something on there that identified, you know, giving them food and water.

TC: All right.

Sir, may I have one second?

*The trial counsel conferred.*

TC: Major (b)(6) thank you. I have no more questions. Please stay on the line for Miss Siegel.

~~WIT: Okay, Captain.~~

IO: Miss Siegel, any cross?

CC: Yes, sir

#### CROSS-EXAMINATION

*Questions by the civilian counsel:*

Q. Good afternoon Major (b)(6) How are you?

A. How are you doing, ma'am?

Q. We've spoken before?

A. Yes, ma'am.

Q. Okay. Now, I'm going to try and keep my questions real simple, so I'm going to ask you to keep your answers real short. Okay?

A. Yes, ma'am.

Q. Okay. Let me talk first about the number of guards that was there.

Were there not three shifts of six that were at the White Horse Detention Facility?

A. I wouldn't argue with that. That sounds right.

Q. So 18 instead of 24. Right?

A. Okay. Like I said, I wasn't sure of the exact number, but three shifts of six sounds correct, ma'am.

Q. Now, when your battalion first got to An Nasiriyah the 15<sup>th</sup> MEU was dealing with detainees. Right?

A. The 15<sup>th</sup> MEU, from what I understand, was not dealing with them. They started giving them to us. Now, prior to us getting there, I honestly do not know what the 15<sup>th</sup> MEU was doing with their detainees.

Q. Okay. When you got there, did you find that there were any detainees at the camp or you don't know?

A. No, there was definitely no detainees at the camp when we got there.

Q. Had you any history of whether or not there had been detainees that came through the camp when the MEU was there?

A. Negative. No history.

Q. You don't know if there was history or there was none?

A. I was never told that there were any EPW's or detainees at White Horse prior to us getting there?

Q. You indicated that Major (b)(6) was the battalion gunner in the S-3 shop. Right?

A. Yes, ma'am.

Q. And he was not relieved of those duties when he was given the facility, was he?

A. No, he was not. The detention duties were secondary -- were a secondary duty. He wasn't relieved of his duties as the battalion gunner, they just -- it was just a mission that was not occurring while the combat operations were going on.

Q. But he was still working in the 3-shop while he was running the facility. Is that not correct?

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- A. Correct. He stood duty; he still stood watch officer duty in the COC. Correct.
- Q. And is it fair to say that he probably spent about a third of his time at the 3-shop and the rest at the facility?
- A. Based on the hour, the shifts, yes, ma'am. He wasn't at the detention facility all the time.
- Q. Correct.
- A. Correct, he was not at the detention facility all the time.
- Q. Now, when this mission of the detention facility was given to you, your understanding as a staff member was that this was supposed to be very short term. Right?
- A. Yes, ma'am.
- Q. In fact, it was supposed to be something that almost, as soon as you got it, it was supposed to be transferred to -- at least one of the units named was 15<sup>th</sup> Marines. Right?
- A. I honestly don't know what unit they were supposed to be transferred to. I didn't -- first, in my analysis I did not expect 2/25 to be holding and guarding prisoners for longer than 24 hours.
- Q. All right. So you -- you felt that there was another unit that was going to take over the facility, but you don't know which one it was?
- A. Correct. There was several -- there was at least one, but I knew that there were several Army MP units that specialized -- I shouldn't say that -- that were more suited for this mission than 2/25 that were in the area.
- Q. Okay. In fact, you know that Major (b)(6) prepared this process flowchart so that he could go to one of these other units, and get them to take over the facility. Right?
- A. Correct. He actually went to the facility --
- Q. And to the various units that he went, nobody would take the facility. Is that right?
- A. Correct, the units -- it was kind of a round-about way because my higher was telling me that somebody else was going to take them, but they, being the 15<sup>th</sup> MEU and the RCT, they were telling me that somebody else was going to take them, but never did anything to get

another unit to take them. We took it upon ourselves to -- and Major (b)(6) myself, Major Paulus, went to these other units there to get them to take these detainees and to take over this mission and they -- we were told by the Talil prison facility that, no, they were closing up and they were not taking any new EPW's.

Q. So in other words, these other units said you guys are running it; you've got it. They weren't willing to accept it?

A. They didn't say that. They just said no. They all said no.

Q. Okay. They just said no.

Now, you indicated that when you first got the order to take that facility, you were advised that you could get assistance from the 15<sup>th</sup> MEU.

A. Yeah, that was verbal and written.

Q. But you didn't get any assistance from the 15<sup>th</sup> MEU, did you?

A. Correct. Correct, we did not get any assistance.

Q. I got it.

You were also -- at least the training that your battalion had was -- and your battalion SOP talked about it as well. This was for an infantry battalion in the field, on the go. Right?

A. Yes, ma'am.

Q. And what you had to do in that situation was kind of collect up these detainee and ship them to the rear. Right?

A. Yes, ma'am, that's the Marine Corps' SOP.

Q. Right. Well, I don't know if the Marine Corps has an SOP, but anyway, it was at least the battalion SOP. Right?

A. Yes, ma'am.

Q. And this rear was supposed to be some element of the FSSG. Right?

A. I understood that, yes, ma'am.



Q. But the FSSG never lent you any support either for this detention facility, did they?

A. They did not. We did not get assistance from really anybody, I mean, we did this mission on our own.

Q. Okay.

A. I mean, based on the need to.

Q. Let me just explain that if there's a silence after your answer, it doesn't mean I'm waiting for more.

A. Okay.

Q. Okay.

Now, when Major (b)(6) was selected to run the detention facility, it was an additional duty for him. He had no special qualifications that you knew of to run a detention facility. Right?

A. Correct.

Q. The enlisted people that you made available to the detention facility came from H&S Company. Right?

A. Yes.

Q. And it included not just cooks -- you're right there were a number of cooks -- it also included admin types?

A. Correct.

Q. And I think Staff Sergeant (b)(6) who was sort of the staff NCOIC at one point, he was a career planner. Right?

A. Yes, ma'am.

Q. Now, from what unit did you get Sergeant Pittman and Lance Corporal (b)(6)?

A. From H&S.

Q. Okay.

A. (b)(6) I believe -- I don't believe he was H&S. I'm not sure. But Pittman was an H&S. We got him -- he was in the armory at one point.

Q. Was he selected -- were those two men selected because they had (b)(6)?

A. Yes, ma'am.

Q. Okay. And did they go down there to the facility before Major (b)(6) actually got there?

A. I can't answer that definitively.

Q. Okay.

A. Those two individuals I think were identified -- I believe they were identified before, but I can't say definitively.

Q. Okay. So in other words, your sense is that they were at the camp before Major (b)(6) actually got to the camp in that four- or five-day period before he got there?

A. Yes, ma'am.

Q. Now, talking briefly about this week period that you were at Camp Lejeune for training.

A. Yes, ma'am.

Q. Okay. In that period, were you aware that Major Paulus gave a class, about a 30-minute class of instruction, on dealing with EPW's; that is, that it included the five S's and the T?

A. Yes, ma'am.

Q. Okay.

A. That was at the company level.

Q. And were you aware that Major (b)(6) was not there for that training, he was setting up live fire?

A. Yeah, I'm not aware of that, but if it's -- I would understand that to be true.

Q. Now, when Major (b)(6) went down to the facility, there was already a Staff Sergeant (b)(6) working there. Right?

A. Correct.

Q. And at that point the guards for the facility, not the perimeter, had not been completely stabilized yet. In other words, you didn't have a working team that went there everyday and stood shifts, did you?

A. No. No, we did not.

Q. When Major (b)(6) got there, that was one of the first things that he wanted assistance with is that he wanted to have a set team of guards.

A. Okay. Yeah, he -- you know, that was -- and once again

I apologize if I'm giving an editorial, but Yeah, coming in as the OIC, and the need for an OIC, was to put this -- what appeared now to be more long-term mission, it was put into an officer's hands to organize it better.

Q. And this was one of the things that he came to you about, to make sure that there was a set guard force and that they were mature and level-headed Marines?  
A. Correct. Correct.

Q. Now you noted that the detainees when they first came in to the camp by the capturing units, were flex cuffed and bagged?  
A. Yes.

Q. Okay.  
A. Absolutely.

Q. And that's consistent with your battalion SOP anyway, isn't it?  
A. Yes, that's in the SOP. Correct.

Q. And when we say "bagged," we're talking about one of those burlap-type sandbags over their heads?  
A. Correct.

Q. And flex cuffs are just kind of those plastic tie-ties that you can tighten down, but they don't loosen up?  
A. Yes, ma'am.

Q. Okay. And were they -- do you know whether when they were taken for interrogation by the HET teams, whether they were still blindfolded and flex cuffed?  
A. I don't know that. I don't know either way on that.

Q. You never were at the facility and watched while any of these men were escorted to the HET?  
A. No, I was not, ma'am. The HET wanted -- they did that on their own. They did not want anybody present while they were conducting interrogations.

Q. The HET team, that was attached to the facility, was run by a warrant officer. Is that true?  
A. Correct, the -- all the HET's, I believe, they were all warrant officers. The OIC's of the HET's were warrant officers.

- Q. The HET is, I think you've told us, reported, when they were there, reported directly to either the 15<sup>th</sup> MEU or the RCT-2. Is that right?
- A. Correct.
- Q. So even though you were the people that were sort of running the facility, they were reporting over you to that chain of command. Right?
- A. Yes, ma'am.
- Q. And it was after the interrogations that HET would tell the guards, and probably Major (b)(6) that a particular individual could be released back to the population or was moving to Talil?
- A. Yes, ma'am. But understand that no individual could be released back into the public unless approved by the commanding officer -- whoever the commanding officer was, if it was the 15<sup>th</sup> MEU, the RCT-2, or 2/25's CO. Yes, that's correct.
- Q. Right. But the basis upon which the CO would make the decision was the recommendation following interrogation of the HET members?
- A. Yes, ma'am.
- Q. There wasn't any input from Major (b)(6) Is that right?
- A. No, ma'am.
- Q. In fact, he was sort of the last one to know. Right? After it had all been determined and recommended and decided upon, he was simply the pawn that was told, let this guy get back to his community, or this guy needs to go to Talil?
- A. Correct. Major (b)(6) never had any say in the matter, he was, you know, as we were -- we were told these guys are either being released or sent somewhere else.
- Q. Now, in terms of equipment your guard force, the people that worked for Major (b)(6) did not have any riot control gear, that's talked about in both the rules of engagement and in the battalion SOP, did they?
- A. Correct.
- Q. So the only thing they had was somebody who would stand cover with an M16 while the search was being conducted. Right?
- A. Correct.

Q. There were no batons or SAP's or anything that a -- say a military police force might have to control detainees?  
A. Correct.

Q. In the entire time that Major (b)(6) was in charge of the facility, from the middle of April to the end of May, did you have any reports of deadly force being used or any complaints of unnecessary abuse from any of the detainees or guards?  
A. No, ma'am.

Q. Did you ever hear a policy that the HET told the guards about asking them -- telling them to have the prisoners stand for longer periods at night so they might be more compliant to an interrogation?  
A. Only after the incident did I hear that. I never heard -- I never heard of that policy as we were running the facility

Q. After the RCT-2 and the MEU left the area and the HET teams were reporting to you, did you ever go down to the facility and pay any closer attention to the things that the HET was doing?  
A. No, ma'am. I went down to the facility. I never went down there -- like I said, the HET operating, they did -- they had their -- they had their SOP on how they dealt with detainees, and it was not anything that we were involved with even though they did start, now, reporting to us.

Q. Did you know how often HET was at the facility? Was it a daily basis? More than once a day?  
A. I would say daily.

Q. Do you have any idea what the average time was between when a detainee was brought in to the facility and when he was interviewed by HET?  
A. Anywhere from one hour to literally 14 or 15 hours later. Sometimes they would show up within an hour and sometimes they would show up, like I said, 14 or 15 hours later.

Q. Now how would you know that if you didn't sort of track the HET activities? Where would you get that information from?  
A. I would get it from Major (b)(6) or Major Paulus.  
(b)(6)

- Q. And were they in the habit, on a regular basis, of coming to you and reporting when HET was aboard?
- A. They would not - they would not call me specifically to say HET is here, no.
- Q. So how would you know how long it took for HET to get there?
- A. By complaints basically, saying when a -- the best example would be, 2100 at night, an EPW being brought in wanting HET to get out there and interview them. and the next day me asking either Major Paulus or Major (b)(6) what's the status of that guy. He would say, the HET hasn't even interviewed them yet. That's how I would know --
- Q. So when you said --
- A. It wasn't something I tracked.
- Q. When you say complaints, you mean from Major (b)(6) or Major Paulus?
- A. Yes, ma'am.
- Q. So at least on the OIC's side, they were trying constantly to get the HET team there faster, shorter time after the detainees actually got there?
- A. Yes, minimizing the time, yes, ma'am.
- Q. However, what control did you have even when the higher headquarters left the area -- what control did you have about setting a schedule for the HET?
- A. I had no control over schedule.
- Q. So when the majors would come to you and say, you know, this guy has been here for six hours or eight hours, and if he hasn't been interviewed, did you have any ability to get on a horn and say, yo, warrant officer, get your people here?
- A. I would do that. We didn't even need to get on the horn. When we took over, they lived within our compound in An Nasiriyah, and I would actually go over and talk to Warrant Officer (b)(6) and he would just explain to me why they were delayed. This was all -- and once again, I don't want to -- you know, you said you didn't want me to express things, but there was a large area that we were operating in and there was a small amount of HET dealing with this large area and they weren't -- they weren't there just to interview the -- interrogate the prisoners, they were there for other missions, going

out in town and finding out other intelligence.

Q. Right. The HET --

A. They weren't gaffing off the detainees, it was just they didn't have the time.

Q. But it was something that the OIC's were concerned about?

A. Yes.

Q. And one of the things that I think you were getting to, is that the HET, in addition to doing interrogation and interviews, also went out with capturing units to go find people specifically. Right?

A. Correct.

Q. Were you aware that besides Major (b)(6) going to 1st battalion, 10th Marines, that he also went to the MP's to see if they would take over the facility, the Army MP's?

A. Yes, ma'am.

Q. Did anyone in the higher chain of command, other than Colonel Waldhauser, the CO of the 15<sup>th</sup> MEU, and Lieutenant Colonel Olson, the 3 for the MEU, did any other higher headquarters personnel go through the facility that you know of?

A. No, I don't -- I don't believe so, ma'am. Not to my knowledge. I don't remember. I only know that because I took Colonel Waldhauser through the facility. It was unlikely that somebody would show up and go through it without coming through either myself or the commanding officer.

Q. Now, you indicated that the HET came through you at the time when higher headquarters had moved on. Are you aware -- hang on one second.

A. Of an FM 3452, that's called Intelligence Interrogation? I'm not -- I've never seen it or read through it.

Q. It's put out by the Headquarters Department of the Army.  
A. Okay.

Q. You've never seen it?

A. No, ma'am.

- Q. So you wouldn't know that according to that document, the HET teams are supposed to be going through the S-2 rather than the 3?
- A. Well -- let me explain that. The HET teams did work with our S-2. Our S-2, didn't deal with a lot of these things. But understand that as the operations officer, I was -- I was tasked with overall operations, so that's what I mean when I'm talking about the -- the HET teams were -- everybody reports to the commanding officer and he has the final say on everything. I oversaw all of the operations that were conducted by 2/25. The HET teams worked -- they started to work under the command of 2/25 worked in conjunction with our S-2.
- Q. Okay. Were you -- were you aware in your four or five trips through the facility of any abuse of force or torturing that was going on?
- A. No, ma'am.
- Q. Anybody in the form of either a detainee or a guard ever say anything to you that they were questioning the methodology that was used at the facility?
- A. No, ma'am.
- Q. Did you have an opportunity to see the in-processing procedure where they put the detainees against the wall and strip search them? Did you ever observe that?
- A. I observed -- yes, partially I observed one, one time, one individual going through that process.
- Q. Did you consider -- how did they overcome the language difficulties? In other words, the camp guards had no foreign language skills amongst them. Is that right?
- A. Correct.
- Q. And how did they overcome that language barrier?
- A. Physical gestures. When an individual was being search, strip searched, the gesture of, you know, pulling down your pants was made, and when I saw it, the individual that was being processed, you know, understood what was -- what he needed to do and the guards -- without the guards -- the guards by giving physical gestures.
- Q. This facility that you saw and felt was perfectly run, did you ever have any inquiries from the Army when they decided they'd like to use your facility?
- A. I'm sorry, ma'am, just ask me that question again.



Q. Yeah. Did you ever -- were you aware of the Army being so pleased with the facility that they wanted to use your facility as well?

A. I received a -- I received an e-mail over my secret computer that was from an Army MP captain who they were tasked with -- they were basically doing road security throughout the whole MEU's zone -- I'm sorry. The MEF zone.

Q. Uh-huh.

A. Basically, the whole Marine zone and I got an e-mail from him saying, my name is Captain -- I don't remember her name -- but it was captain so and so and she said when we're in that area and we have an EPW's we'd like to drop them off at your facility, and I basically sent an e-mail to her and I CC'd my higher who, at the time, was 1st Marine Division saying, you know, no, we already have more than we can handle right now, or we have more than, you know, than we'd like to have and I prefer to nobody dropped them off here but she had heard that we had a facility and that it was, you know, a good -- it got to the point with a reputation established -- you know, instead of a temporary, a more permanent holding facility.

Q. Now, when it became a more permanent holding facility, that was later on in the lifespan of this facility when you no longer were bringing in just detainees or EPW's, you were bringing in criminals?

A. Correct. Correct. Until the jail cell in town was completed.

Q. And that was a problem that Major (b)(6) brought to your attention on more than one occasion as well, wasn't it? That the facility wasn't built for holding criminals and, you know, how long are they supposed to stay there, and aren't we supposed to be just moving people through this facility. That was something he brought to your attention?

A. Yes, ma'am.

Q. Okay. And really, the mission of this detention facility was to get people in, have them interrogated, and get them out as quickly as possible. Is that right?

A. Yes, ma'am.

Q. Do you know who Lieutenant Colonel (b)(6) is?

A. Yes, ma'am.

Q. When you were over in An Nasiriyah and he was the 2/25 XO. Is that right?

A. Yes, ma'am.

Q. Do you know whether he ever traveled to Kuwait during the period of time that NCIS was investigating the facility?

A. Yes, ma'am.

Q. He did?

A. He traveled to Kuwait in regards to the incident. Is that what you are speaking of?

Q. Right.

A. Yes, ma'am, he did.

Q. And did he become concerned about the techniques that NCIS was using?

A. Yes, ma'am.

Q. In fact, did he talk to the Marines when they came -- either when they came back from Kuwait City or while they were there about the various heavy-handed techniques of NCIS?

A. Yes, ma'am, he was concerned.

Q. And do you know whether he passed that information about the techniques NCIS was using and people signing statements that weren't accurate, did he pass that word on to you and to the CO?

A. Yeah, we basically talked about it and tried to -- you know, we wanted somebody to be aware that the treatment of your Marines -- you know, we were looking out primarily for our Marines, for them, so the way they were being treated we had some questions about it. We wanted somebody higher to be aware of it, so he spoken to me about it. Once again, being an operations officer there's not much I knew about stuff like that, it gets more into the legal realm, but the commanding officer was made aware of it so he could pass it on to his boss.

IO: Miss Siegel, what's the name of the XO, last name, lieutenant colonel?

CC: (b)(6)

IO: Thank you.

Q. And I believe he was a major at the time when you were over there. Right? He's just recently --  
A. Yes, ma'am, he was Major (b)(6) at the time.

Q. He just recently was promoted to lieutenant colonel?  
A. Yes, ma'am.

Q. Okay.

Can you give us -- I don't know whether you gave us this or not -- but can you give us your best estimate of when the MEU and RCT-2 left so that you actually were the higher headquarters? Do you know when, approximately that was?

A. If you don't mind, I'll just try to run this through in the timetable out loud too so that I understand it better. April to right around the beginning of May, the end of April beginning of May, the 15<sup>th</sup> MEU started to pull out. Sometime around the first week in May, RCT took over for the MEU, became our higher headquarters for about two weeks, which would take us to the mid-, end-of-May timeframe, if I'm not mistaken. I think right around the last week in May, beginning of June, we fell into the realm of 1st Marine Division, operating in the Dhi Qar Province as Task Force --

Q. Okay.  
A. Yeah.

Q. Were -- you indicated that there were some issues that Major Vickers brought to the staff's attention. Was one of the things he was concerned about is the possibility of getting a translator or translators to the facility?  
A. Yes. Yes. Everybody wanted translators, but, yes, specifically Major (b)(6) and the EPW facility, yes.

Q. Did he also come to the command when one of the capturing units brought in A, a young boy; and B, a pregnant lady?

A. Yeah, we were made aware of that.

Q. In fact, was Major (b)(6) so upset about that he wanted the CO of the capturing unit disciplined for bringing in a beat up teenaged boy and a pregnant woman?

A. I'm not aware of that. I'm not aware that he wanted discipline of the CO, but I know that it was a subject that concerned Major (b)(6).

- Q. Did he also come to the staff to make sure that it was understood that capturing units and other unauthorized personnel would not be allowed in the facility?
- A. I'm sorry. Say that question again, ma'am.
- Q. Is another issue that he brought to the attention of the staff the idea that he did not want unauthorized people there?
- A. Correct. Which is -- yes, that's true.
- Q. He didn't want, in particular, the capturing units to have access to the people that were brought to the facility. Right?
- A. Once the individual was captured, Major (b)(6) yes, did not want -- once the person was dropped off at the facility that was it. The capturing unit would leave the area immediately and have no further contact. That went up to the HET and the S-2 to go forward from there. We weren't supposed to be there, that was it.
- Q. And photographs were not supposed to be taken?
- A. Absolutely.
- Q. Okay. The camp commander -- there was a camp commander, was there not?
- A. Yes, ma'am.
- Q. Was that Major (b)(6)?
- A. Yes, ma'am, toward the end. Once again, the 15<sup>th</sup> MEU commander -- the MEU 15<sup>th</sup> camp commander and I believe Major (b)(6) took over after the MEU, Yeah, Major (b)(6) was the camp commander.
- Q. He was double hatted at the CO of H&S Company?
- A. Yes, ma'am.
- Q. Now, you indicated that Major (b)(6) picked out the buildings where the facility was going to operate out of. Isn't it true that the 15<sup>th</sup> MEU had already designated those buildings?
- A. I'm not aware of that. I can't -- I know those buildings were identified. I thought that we had picked them out. I'm not aware of the 15<sup>th</sup> MEU picking them out. I wouldn't dispute it though.
- CC: One second, sir.

The defense counsel conferred.

Q. Major (b)(6) you indicated that on one of your walk throughs of the facility you went with Colonel Waldhauser?

A. Yes, ma'am.

Q. And was that early on, or toward the end of the life of the facility, or what?

A. It was early on because Colonel Waldhauser was with the MEU and he left.

Q. That's right?

A. So it was early on.

Q. Okay. Yeah. You said that there was something posted on the walls?

A. Yes, ma'am.

Q. Was this in an area for the guards to see or an area for the detainees to see?

A. It was for the guards. They were outside of the room that the detainees were in. If I understand it correctly they went into these rooms, they didn't have access to it.

Q. It was in English, that's your recollection?

A. It was definitely in English.

Q. Could this have been the rules of engagement that was posted on the walls?

A. It very well could have, yeah. I think -- yeah, more of an instruction on what to do because the guards were -- you know, their weapons were pointed in certain directions. They couldn't -- they couldn't just be, you know, shoot 'em up if they tried to get away. There was a definitive field of fire that they could only shoot at because then they would be shooting in random locations where other Marines were located.

Q. So in other words, even if there wasn't a local SOP in effect, it appeared to you that things were done at the camp on a regular basis. There was an order and a procedure that was followed on a regular basis.

A. Absolutely.

CC: Sir, that's all I have.

IO: Any redirect, Captain McCall?

TC: Very briefly, sir.

IO: Okay. Major Powers, Captain McCall is going to ask you some more questions.

WIT: Okay. I can hardly hear you, Captain.

TC: Can you hear me now, sir?

WIT: I can hear you now.

TC: Okay.

REDIRECT EXAMINATION

Questions by the prosecution:

Q. Sir, you testified about Lieutenant Colonel (b)(6) being concerned with the heavy-handed techniques of NCIS.

A. Correct.

Q. All right. What was the -- what was the source of the complaint against NCIS? Do you know who it came from? Let me take it back. How did Lieutenant Colonel (b)(6) become informed that there was a problem with how NCIS was handling the Marines from 2/25?

A. Yeah. Okay. Now, from what I believe, and once again, Colonel (b)(6) at the time Major (b)(6) came to me with a -- evidently from -- as the groups of Marines -- the concern that we had at the battalion level were when this investigation started, was that they were -- first they wanted to see six Marines and we had to transport the six Marines down there, and then back up, and then it was send these six -- or ten Marines. There was numerous times that this occurred and it became a burden on the unit to keep sending these Marines down and back because they took away from the mission in Iraq and also those Marines were now being taken out of the mission and also we had to transport them down there. We just didn't have a lot after assets. As the Marines started to come back, I think the individual Marines themselves expressed concerns to their commanders about the tactics that were being used and then Colonel (b)(6) you know, as the battalion XO inquired, like what do you mean? And then started to get, you know, what kind of tactics were being used by the NCIS agents to get information out of these Marines.

Q. Was the source of the complaint to Colonel (b)(6) coming from Major Paulus and Major (b)(6)?

A. I'm not aware of that. I can't -- I honestly I don't know where the source came from. Initially upon the question I would answer the individual Marines, but I don't know where the -- I can't answer definitively if it was Major Paulus -- once again, once -- once this left the, you know, the operations realm, my involvement became very little and I can tell you that as this investigation progressed, I called up and I e-mailed Major Joe Lore who, at the time, was the 1st Marine Division legal and I asked him basically, hey, what the heck is going on here. You know, this is getting to be a burden getting, you know, operationally it's getting to be a burden sending these Marines down, bring them back, send them down again, send more guys, you get the picture. Major Lore said to me, this is beyond you now. Don't get involved.

Q. Let me ask you this, sir --

IO: Let me ask a question.

When you say -- Major (b)(6) Colonel Gallo. Whenever you say that Marines are being sent down there at the request of NCIS to be interviewed, where was down there?

WIT: Kuwait, sir.

IO: Okay.

---

WIT: At a four-star hotel. They were interviewed in a nice hotel down in Kuwait City.

IO: And they were complaining about that, huh?

WIT: Yes, sir, they were and if you want me to speak to that I can. I can tell you just what I've heard.

They were basically told to sit in the lobby for six or eight hours before they were even interviewed, and then some other tactics, threats that were being made against them. Those were some of the concerns. Like I said, those are questions probably better answered by someone else because everything you are going to hear from me on that is second-hand, you know, second-word and just the concerns that were brought up. Yes, the tactics that were being used by NCIS were believed to be unfair and

that's all I can speak to.

Q. Now you were aware of those tactics, sir, that were being employed by NCIS from those Marines, but you weren't aware of the tactics that the Marines were using on the Iraqi prisoners while they were being kept at the Camp White Horse Detention Facility?

A. Correct.

TC: Thank you, sir.

I have no more questions.

IO: Miss Siegel.

CC: No, thank you.

IO: Okay. Major (b)(6)

WIT: Yes, sir.

IO: -- apparently there are no more questions from counsel.

WIT: Okay, sir.

IO: Hang on for one second though.

I have just a couple of questions myself.

WIT: Yes, sir.

IO: Can you hear me all right?

WIT: Yes, sir

EXAMINATION BY THE INVESTIGATING OFFICER

Questions by the investigating officer:

Q. I'd like to understand the chronology just a little bit better and let me go over it with you and see if this conforms with your recollection of the events.

A. Yes, sir.

Q. You-all -- and I mean 2/25 -- basically arrived in An Nasiriyah approximately 5 April?

A. Yeah, that's when we started. The first elements got there around 2 April and then the remainder of the



battalion got there around 5 April I'm not mistaken.

Q. Okay. So your full up on 5 April at An Nasiriyah?  
A. Yes, sir.

Q. Okay. And the -- a few days before that on around the 2nd of April you received written and oral orders to stand up this detention facility from the 15<sup>th</sup> MEU?  
A. The wording there is not correct, sir. I would say the written and verbal was that -- I received was to handle -- be prepared to handle EPW's and detainees.

Q. All right. Thank you.

And that came on or around 2 April?  
A. Yes, sir. Yes, sir, that's when I received it. I can only explain that myself and the commanding officer went to An Nasiriyah and the reason -- the only reason -- if there's anybody who can check it -- that it is clear to me was I was up in An Nasiriyah with Task Force Tarawa and the 15<sup>th</sup> MEU the night of Jessica Lynch's rescue, and that's when we liaised with the Task Force Tarawa and the 15<sup>th</sup> MEU on what our possible future missions might hold.

Q. All right. And then according to what you had mentioned earlier, it was about, approximately, give or take a day or two I suppose, after you got this order on 2 April that the first EPW's numbering about eight arrived at White Horse?

A. Yeah, that's correct, sir.

Q. And Major (b)(6) was not in charge of White Horse at that time?

A. No, he was not.

Q. Or the detention facility at White Horse.

A. That's correct sir, he was not in charge.

Q. And it was at about a week after that, so approximately two weeks after you received the MEU order on 2 April that Major (b)(6) was selected to be the OIC of the facility?

A. Yes, sir, generally speaking timeframe, yes, sir. The specific number of days I don't know, but to my recollection that's the timeframe that seems correct.

Q. All right. And that takes us to about mid-April or so?  
A. Yes, sir.

Q. All right. And then Major (b)(6) was relieved, not for cause, but because other duties became relevant again, for example setting up the live fire range about a week before you call it the incident, the death of an Iraqi detainee?  
A. Yes, sir, I'm not mistaken it was about a week -- to my memory and again, a lot of the notes on this were destroyed because they were secret material, but it was about a week that Major (b)(6) was told -- I mean, it wasn't, hey, you're relieved of this it was you're relieved of this because we need you to do something else at this time. At the time there was no problem with the facility.

Q. I understand. I am just trying to establish a chronology here to be clear in my own mind.  
And that as we've established is about a week before the death?  
A. Yes, sir.

Q. Okay. And if the death occurred sometime around the first week of June, is it safe to say that Major (b)(6) resumed his responsibilities in the S-3 shop as the gunner around the end of May, beginning of June?  
A. Yeah, about around the end of May, beginning of June, yes, sir.

---

IO: Thank you.  
I have no other questions.

WIT: Okay.

IO: Captain McCall, any questions in light of mine?

TC: No, sir.

IO: Miss Siegel, any questions in light of mine?

CC: No, thank you, sir.

IO: Major (b)(6) that apparently is all of the questions for you today.

AFFIDAVIT

AFFIANT, Sergeant Gary P. Pittman, USMCR, being first duly sworn, deposes and says of his own personal knowledge:


Major Clarke Paulus, USMC, was the officer in charge (OIC) of the Camp Whitehorse detention facility during the time that (b)(6) was admitted as a detainee. Major Paulus was present during the time that (b)(6) was brought into Camp Whitehorse; as such, he is able to provide testimony about his observations as the OIC, and his opinion regarding whether my conduct during this in processing consisted of actions made me derelict in the performance of my duties. As the OIC on that date his understanding of my duties as a guard at Camp Whitehorse and his opinion of my conduct is extremely important for me to rebut the charges that I was derelict in the performance of my duties at this time and with regard to (b)(6)

Major Paulus is also an important witness in my case because of his presence during the time that the (b)(6) was present at Camp Whitehorse. This is important because there has been testimony that alleges that I used an inappropriate amount of force with the (b)(6), and this use of force will be used by the government to attempt to prove both the dereliction of duty and assault charges that I face.

Major Paulus' interactions with the (b)(6) are important because they will directly refute the testimony regarding my allegedly inappropriate use of force with regard to the (b)(6). Major Paulus was the OIC of Camp Whitehorse during the time period that the was detained in our camp and will be able to testify about the (b)(6) physical appearance and his face-to-face interactions with the (b)(6) during this time period.

This statement was typed by Captain Folk but I have had the opportunity to review the statement. After reviewing the statement I had the opportunity to make any changes I desired. I did not make any changes and believe the statement to be correct and accurate.

"I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on 28 June 2004."

  
Gary P. Pittman  
Sergeant  
U.S. Marine Corps Reserve

6-28-04  
Date

Subscribed and sworn to before me on 26 June 2004 at Camp Pendleton, California.

APPELLATE EXHIBIT XXX

PAGE 1 OF 2

W. A. Folk

W. A. Folk

Captain, USMCR

Judge Advocate

Authorized to administer oaths  
and act as notary by 10 USC 936  
and 10 USC 1044a. No seal required.

APPELLATE EXHIBIT XXX

PAGE 2 OF 2

AFFIDAVIT

AFFIANT, Sergeant Gary P. Pittman, USMCR, being first duly sworn, deposes and says of his own personal knowledge:

I have known Sergeant (b)(6) USMC, for approximately two and a half years. He was the Non-commissioned officer in charge of the guards at the Camp Whitehorse detention facility from the time that I arrived at Camp Whitehorse in early April until Sergeant (b)(6) left the Camp in mid-May of that year.

As my NCOIC Sergeant (b)(6) frequently observed me in the performance of my duties as a Camp Whitehorse guard. In addition, as the NCOIC of the guards Sergeant (b)(6) is able to testify about the duties I had as a guard, my ability to perform those duties, and the training and guidance that he, as the NCOIC directly in charge of guards, provided to me.

As the NCOIC of the guards at Camp Whitehorse Sergeant (b)(6) can also provide testimony about my reputation, among the guards that he was in charge of, for using only the appropriate amount of force as a guard, even when faced with potentially life-threatening situations.

Sergeant (b)(6) as NCOIC of the guards at Camp Whitehorse, will be able to provide testimony regarding the effect that the admission of hardened and violent Iraqi criminals had on the guards. Sergeant (b)(6) is uniquely positioned to provide this testimony since he was able to observe the manner in which detainees and guards interacted on a daily basis both before and after the admission of violent Iraqi criminals.

Sergeant (b)(6) will also be able to provide testimony about the changes that I implemented regarding the manner in which the initial procedures used to process Iraqi detainees into the detention facility were conducted. Specifically, when the 15th Marine Expeditionary Unit (MEU) turned over the facility to our battalion, they would search detainees while making them lie face down on cement, I did not believe that this was effective or appropriate, and changed the procedure for this searching to one where detainees would be placed against a wall and searched. Sergeant (b)(6) was the person with whom I discussed this issue.

Sergeant (b)(6) will also testify that throughout the time that I worked as a guard at Camp Whitehorse, he never saw me use an inappropriate amount of force while in the execution of my duties as a guard.


Sergeant (b)(6) will also provide testimony that shortly after he first arrived at Camp Whitehorse he was told by members of the Human Intelligence Exploitation Team (HET) that the guards were being too easy on detainees, and that he was given instructions by members of HET to keep the detainees awake and to make them uncomfortable until the HET arrived in order to make the detainees more likely to give the members of the HET team intelligence information.

Sergeant (b)(6) is not an immunized witness, unlike Staff Sergeant (b)(6)

The time periods of which that Sergeant (b)(6) can provide testimony are important to my case because the government has alleged that I was derelict in the performance of my duties from 1 April 20 30 June 2003.

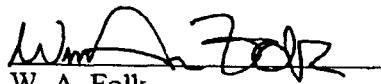
This statement was typed by Captain Folk but I have had the opportunity to review the statement. After reviewing the statement I had the opportunity to make any changes I desired. I did not make any changes and believe the statement to be correct and accurate.

"I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on 28 June 2004.

  
Gary P. Pittman  
Sergeant  
U.S. Marine Corps Reserve

6-28-04  
Date

Subscribed and sworn to before me on 28 June 2004 at Camp Pendleton, California.

  
W. A. Folk  
Captain, USMCR  
Judge Advocate  
Authorized to administer oaths  
and act as notary by 10 USC 936  
and 10 USC 1044a. No seal required.

APPELLATE EXHIBIT XXXI  
PAGE 2 OF 2

AFFIDAVIT

AFFIANT, Sergeant Gary P. Pittman, USMCR, being first duly sworn, deposes and says of his own personal knowledge:

Major Morant Pittman is one of my (b)(6). Of my (b)(6) he is the one to whom I am the closest. Major Pittman and I grew up together in a large family. In addition to my (b)(6), I have (b)(6). Major Pittman was my brother that I most wanted to emulate; I grew up with him from the time that I was born until he left for college when I was in high school.

While I went to community college I had frequent contact with him. He would come to my college basketball games.


Major Pittman has also personal knowledge of my career in the Marine Corps and the Army. He was a Lieutenant in the U.S. Army when I graduated from bootcamp.

As my brother, and as an officer in the U.S. Army, Major Pittman can provide testimony regarding my character for truthfulness, my character for following the law, and my military character. During our careers in the military we have performed military duties together.

In addition to providing evidence of my character as outline above, Major Pittman can also provide extenuation and mitigation evidence in sentencing if that becomes necessary.

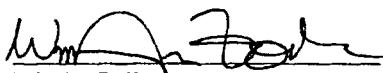
This statement was typed by Captain Folk but I have had the opportunity to review the statement. After reviewing the statement I had the opportunity to make any changes I desired. I did not make any changes and believe the statement to be correct and accurate.

"I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on 28 June 2004. "

  
Gary P. Pittman  
Sergeant  
U.S. Marine Corps Reserve

6-28-04  
Date

Subscribed and sworn to before me on 28 June 2004 at Camp Pendleton, California.

  
W. A. Folk

APPELLATE EXHIBIT XXXII  
PAGE 1 OF 2

Captain, USMCR  
Judge Advocate  
Authorized to administer oaths  
and act as notary by 10 USC 936  
and 10 USC 1044a. No seal required.



UNITED STATES MARINE CORPS  
IN THE SIERRA JUDICIAL CIRCUIT

UNITED STATES	)	
	)	
v.	)	
	)	
GARY P. PITTMAN	)	DEFENSE SIXTH DISCOVERY
(b)(6)	)	REQUEST
SERGEANT	)	
U. S. Marine Corps	)	

SERGEANT GARY P. PITTMAN, U.S. Marine Corps, by and through detailed defense counsel, Captain W. A. Folk, hereby requests that the trial counsel provide the following information at the earliest possible date.

1. A complete copy of the transcripts of all depositions conducted in Houston, and New York. This includes all depositions conducted on 3 June, 5 June, 6 June, and 7 June.
2. A complete record of court transcripts and documents related to Sergeant (b)(6).  
(b)(6) Additionally, any investigations that were performed by the Marine Corps during that time period into allegations of adultery made against him.
3. All paperwork related to Sergeant (b)(6) request to be discharged from the United States Marine Corps as a conscientious objector.
4. The name address and telephone number and title of the Naval Criminal Investigative Service (NCIS) agent or agents who requested the information from Sergeant Pittman's employer regarding all investigations into Sergeant Pittman's conduct as an federal and state corrections officer.
5. The date and time of the request mentioned in par. 4, *supra* and a copy of the request for this information.
6. A copy of the privacy log and/or release of information log maintained at the Department of (b)(6).
7. The policy manual concerning the disclosure of confidential information to requesting agencies.
8. A copy of the log maintained pursuant to 5 U.S.C. §552(a) for handling requests for information and release of said information.
9. A copy of the policy for the Federal Correctional Facility in so far as it pertains to the release of personnel information.

This discovery request is continuing and shall apply to any additional charges or specifications that may be preferred after this request for discovery is served on the government. Immediate written notification is requested on all items the government is unable or unwilling to produce.

The defense acknowledges that certain of these requests may have been partially complied with prior to this discovery request. Those matters previously provided need not be duplicated.

The defense reserves the right to make additional continuing discovery requests.

The defense requests a written response to this request.

/S/

J. Tranberg & W. A. Folk

## Folk Capt William A

---

**From:** Francis Maj Leon J  
**Sent:** Wednesday, June 23, 2004 3:33 PM  
**To:** Folk Capt William A  
**Cc:** 'John Tranberg (E-mail)'  
**Subject:** RE: Sixth Discovery Request

Gentlemen,

Below is a paragraph by paragraph response to your sixth discovery request.

Paragraph 1: I am being told by the reporter section that the transcripts should be done from the depositions in their entirety next week. I will provide a copy once received.

Paragraph 2: The government will provide only a copy of the right side of Sgt (b)(6) SRB. The government will not attempt to obtain info on any previously endured divorce or anything that relates to the causes for the divorce. This information is irrelevant for any legitimate purpose and is unwarranted.

Paragraph 3: The government will not obtain copies of any conscientious objector package (b)(6) may have submitted, since this is irrelevant for any legitimate purpose.

Paragraph 4: The NCIS Agent who initially contacted the BOP asking for information was (b)(6) from Washington D.C. office. The investigator from BOP who gave him the info was Mr. Lloyd Boyle. Mr. Boyle's contact info has been previously provided in separate correspondence. I have an ROI that deals with this meeting. If you have not been provided a copy, I will make one available immediately for the defense. My previous invitation to inspect my files for any info you may not have is open and continuing.

Paragraph 5: According to the ROI the contact was made on 20 August 2003.

Paragraph 6: All logs kept by BOP as to the release of their internal investigations are irrelevant to any issue that could be addressed by the court-martial, thus the government will not try to obtain them if they exist.

Paragraph 7: Any policy manual kept by BOP as to the disclosure of confidential information to other Federal Agencies is also irrelevant to any issue that could be addressed by the court-martial and the government will not try to obtain this.

Paragraph 8: Any logs kept under the listed provision regarding the release of info to other Federal Agencies is also irrelevant to any issue that could be addressed by the court-martial and the government will not try to obtain these.

Paragraph 9: Same answer and reasoning as in paragraphs 6 through 8.

s/f  
Maj Francis

-----Original Message-----

**From:** Folk Capt William A  
**Sent:** Wednesday, June 23, 2004 14:30  
**To:** Francis Maj Leon J  
**Cc:** John Tranberg (E-mail)  
**Subject:** Sixth Discovery Request

Sir,

attached you will find the sixth defense request for discovery.

V/R

Capt. Folk

<< File: Discovery Request for Pittman VI.doc >>

Wm. Anders Folk  
Captain, USMC

Judge Advocate  
LSSS-D  
Camp Pendleton, CA

(b)(6)

XXXIII

4

4

AE XXXIV pg 1 Removed under (b)(6)

TC: Yes, sir. The government calls Lieutenant Colonel  
(b)(6)

Lieutenant Colonel (b)(6) USMCR, was called as a  
witness by the prosecution, was duly sworn, and testified as  
follows:

*DIRECT EXAMINATION*

Questions by the government:

Q Please state your full name?

A My name is (b)(6)

Q And, sir, currently you are -- can you please tell us  
the city and state where you currently reside?

A Yes. I currently reside in (b)(6)

Q Sir, you are a Lieutenant Colonel in the United States  
Marine Corps Reserve?

A Correct.

Q And what is your unit?

A I'm currently a member of 2d Battalion, 25th Marines. I  
was in the capacity of the executive officer. Currently  
I'm transitioning out of that billet but still within  
2/25. And I expect to be the Peacetime/Wartime Support  
Team Commander at Dot Dover, New Jersey.

Q All right, sir?

A PWST.

Q Now during the -- during Operation Iraqi Freedom, you  
were the executive officer of 2/25. Right?

A Correct.

Q And you deployed with them to Camp Lejeune and then  
actually went with them to Camp Lejeune and then  
deployed with them off to Iraq?

A That is correct. In March of 2003.

Q Now, sir, during the time that you were at Camp Lejeune,  
were you aware of whether Major Paulus was given any  
type of law of war or treatment of EPW classes?

A I was not aware.

Q Okay.

IO: I'm sorry. What was your answer?

WIT: I was not aware, sir.

IO: Not aware.

*Questions by the government:*

Q Now, sir, do you recall right around the time that Major Paulus became the OIC there at the detention facility?  
A Do I recall the time frame?

Q Yes.  
A Roughly, yes.

Q And what was that, sir?  
A Early to mid April of 2003.

Q Well, is that Major Paulus that took charge?  
A Excuse me. Let me back up a second. Major Paulus would have been more along the lines of late May, early June 2003. Excuse me.

Q Sir, at some point you were 2/25 was tasked from the MEU, from the 15th MEU to run this detention facility at Camp Whitehorse. Correct?  
A That is correct. That was early April 2003.

Q All right, sir. Now, how -- was there any type of planning process that went into how you were going to run this camp?  
A Yes. I have to back up a little bit. Cut me off if I'm going to long here. We received a written order in early April, basically anticipating the missions or the tasks that we would receive once we got up to the Nasriyah area. When we actually got to Nasriyah from Kuwait, we did not receive a written order from the MEU detailing out these tasks, instead we got a verbal tasker from the MEU and specifically from the MEU's S-3, Lieutenant Colonel Olsen. From that tasker, our battalion, as we do for any op order or any type of mission planning, basically convened our battle staff and we went through the equivalent of a Marine Corps planning process geared toward the task that we were assigned.

These tasks were on the order of probably six or seven. I can look at my notes for the exact number. And the last of the number was to be prepared to hold EPWs awaiting transportation to the MEF holding facility. So within that context, we conducted a planning cell, but it also included all the other tasks that we were charged with doing, and that was, you know, throughout Nasriyah. Part of the battalion going here, some going there, attacking any remnants of the Fedayeen, destroying any -- Saddam's Baath party, et cetera, et cetera, and one of those taskers, as I said, the last one was just be prepared to regarding the holding facility.

Q All right, sir. Now, I want to shift gears and go forward in time to when Major Paulus actually became OIC there at the facility?

A Right.

Q That was towards the end of May 2003?

A That is correct.

Q And when that transition was going to take place, were you aware of any discussions or any planning meetings that were going on with him taking charge there?

A I'm not aware of any.

Q Okay. So as executive officer, did you expect Major Paulus to become aware of his duties for running that particular detention facility?

A Well, Major Paulus coming into that role was predicated by the need to utilize Major (b)(6) who despite being a Major was the battalion gunner, to conduct various training ranges and live fire ranges in the Nasriyah area. That was something that was geared toward keeping our skills current. It was something that division had emphasized that we continue to do while all our other security and stability operations were going on around Nasriyah and the rest of the Di Qhar Province. So within that context, it was understood that Major (b)(6) would take on these roles of building ranges and things like that, and would pass on to Major Paulus the responsibilities as the OIC. So it was implicit, that any type of, you know, turnover or discussions would occur in that context.



Q Okay. Now, was there -- at anytime, did you ever have any discussions about how the EPWs would be treated?

A To my knowledge, there was never any specific discussion on that. When we first arrived in Kuwait, actually even in Camp Lejeune, we had EPW handling and detainee handling type of training that was basically decentralized down to the company level after the battalion's S-3A, Major (b)(6) (PH), put together a very basic outline in accordance with the Marine Corps reference publication that speaks to that area. That decentralized running of the classes was part in partial to doing refresher NBC training, doing refresher MOUT training, and basically a round robin of different training that we were trying to squeeze in prior to deploying. But there was never anything, to my knowledge, that was every specifically geared toward what does one do with an EPW or a detainee, other than in the general context of handling.

Q Well, as executive officer, once Major Paulus was tasked to be OIC, was it your understanding that it would then light on him to figure out what the rules were as far as treatment of these individuals?

A Well, I don't know about figuring out the rules because, again, by the time he took over, this particular facility was almost two months underway. So in my mind, looking at it now, it would have been basically ~~understood that whatever rules were in place already~~ would have been continued. And Major Paulus was approximately close enough to the facility and the people that were involved there to have situational awareness as the solid XO and the solid officer that he is, to know what was going on. So I don't think that it had to be any revisitation of, you know, what was in place already and what was not.

Q All right. Now there was currently -- at that time there was a 2/25 combat SOP in place?

A That is correct.

Q And who drafted that, sir?

A I was actually the drafter of the current version, which was essentially plagiarism with a lot of editing of the previous version which dates back to 1996 or 1997, done by one of my predecessors as the S-3. I believe he is now a full bird Colonel, Gary Corwin, and we dwindled that down to keep it as basic and as light as possible when we are at Camp Lejeune.

Q Now, is this SOP provided, a copy of it provided to all the officers, to include Major Paulus?

A It was actually provided two to three copies per company. One to the company commander, I think one to the XO. And perhaps on the rifle company level, it got down a little bit further than that, but it was not distributed to each officer per se.

Q Was it distributed to H&S Company, sir?

A Yes, H&S got a copy of it, I believe.

Q And was it distributed to them prior to Major Paulus becoming the OIC of the detention facility?

A Yes.

Q Sir, I'm going to show you what is IO Exhibit 3. These are excerpts. Is that the SOP you are talking about?

A Yes. This looks like the version that we just spoke about that I drafted.

Q Okay. And then I see kind of in the middle of the page there, it references that treatment of EPWs should be consistent with the Geneva Convention. Is that correct, sir?

A Yes, through the highlighted portion. Certainly.

Q Okay. Thank you.

A And now, in terms, specifically, I just want to clarify that in terms of specifically handing a copy of that to Major Paulus, I cannot testify to that. I remember braking them down to piles, a pile for Echo, Fox, Golf H&S and Weapons. How they got disseminated, I know I hand delivered some to some companies, depending on what time of the day it was, where the units were. So as far as physically getting them to H&S, whether I handed them to Major (b)(6) Major Paulus or whether one of the runners in the battalion did it, I cannot attest to that time.

Q Yes, sir. Now, but as executive officer, if a copy was distributed to Major (b)(6), would you expect that he and his XO would at least review it?

A I would expect that they would have reviewed it or at least looked through it.

Q And complied with it?

A Yes. To the extent that it was applicable, yes.

Q Sir, were you aware that there at the detention facility that a procedure commonly called 50/10 where you would require a prisoner to stand up for 15 minutes when they were sandbagged over their heads, flexicuffed on their hands, and then they could sit for ten minutes of an hour for an extended period of time until HET would arrive to interrogate them. Were you aware that that was going on at the detention facility?

A I was not aware during the time that we were actually running the facility that that was going on. I was made aware of it only in or around mid to late June of 2003, and that was by speaking to an NCIS agent and they brought that to my attention. And they explained basically the mechanics that you just outlined.

Q Okay, sir. Now, after -- I want to fast forward now and talk specifically about (b)(6).

A Yes.

Q When did you learn that (b)(6) had died there at the facility?

A I myself learned sometime in the early hours of June 6th 2003. And by early hours I mean somewhere around 0530. I was informed by the S-3 officer, Major (b)(6) Major Walter (b)(6) that he had died during the night.

Q Okay, sir. And once that occurred what happened thereafter?

A In terms of exactly what occurred, I have to speak somewhat toward what was also going on that day, not speaking about the rest of the province, which as you can appreciate was very busy. We had Major General Wall of the 1st UK Division, and coincidentally, Major General Mattis of our 1st Marine Division flying into Tallil to tour Nasriyah that particular day. As the executive officer, as the extra officer, I was the one that was always detailed to make sure that these irritations, you know, were conducted, move the various VIPs around where they need to go, and basically in my capacity as the XO, oversee the staff as to any presentations that needed to be done by Powerpoint or whatever. So that was going on against the backdrop of finding out that (b)(6) had died during the night.

So essentially, after hearing about this, I know the S-3 got involved with speaking to the Whitehorse personnel, speaking to our BAS personnel; specifically, our Lieutenant commander (b)(6) or Commander (b)(6) our two surgeons about what would occur next. And again, I was very heavily involved at that point with the general's that were coming in. I was on my way over to Tallil to meet them and I know that at some point the body was taken to our BAS, which was co-located with our CP which is where we were going to be briefing the generals, from there went across the Euphrates River a short distance to the Nasriyah hotel morgue.

Q All right, sir. At some point, did you actually observe the body?  
A I did.

Q When was that, sir?  
A I observed the body physically sometime around 1800 or around that time on the evening of 6 June.

Q Did you notice anything unusual about the body?  
A I didn't and, of course, you can appreciate that I'm not a doctor. I'm a lawyer. When myself and Lieutenant Commander (b)(6) and the two investigators from the Marine Corps a warrant officer and I believe a staff Sergeant went to this facility -- if you want more background on why we were there, et cetera, let me know. I'll try to keep it directly to the point.

Q Well, I guess the point I want to get to, sir, is: When you looked at the body, did you notice any bruising on it?

A What I noticed was -- I noticed a little bit of a dark around the individual's wrists, Hatab's wrists, as though he had had flexicuffs. The body was not decomposing yet per se, and again, this is me talking as a layperson. He may have had bruising around his ribs, if I recall, and I think that is the extent of it. And we looked at a frontal, looked at him frontally, took some pictures. We flipped him over took some pictures as well. He was naked in a body bag, and that is my recollection of what I saw.

IO: Let me interrupt -- I'm sorry. When you observed the body, was it at the Nasriyah Hotel Morgue?

WIT: It was at the Nasriyah Hospital morgue, yes, sir.

IO: Hospital morgue.

WIT: Yes, sir.

IO: I thought you said Nasriyah Hotel Morgue.

WIT: If I did, I stand corrected, sir.

Questions by the government:

Q Sir, did you do you recall who took those photos?

A Yes. I took some photos with the battalion's digital camera, and the Marine investigators also took photos, that was this warrant officer and staff Sergeant that were also there in the capacity of investigating this on behalf of either the division or MEF.

Q Okay. Sir, I'm going to show you a photograph. It's IO Exhibit 9, and it's photograph 13 of 17.

IO: Thirteen of seventeen?

Questions by the government:

Q Sir, is this the person that you saw on that occasion?

A ~~This looks like him, yes. I would imagine this is him.~~

Q Sir, on that photograph there is some bruising around the chest area. Is that the bruising that you noticed that you were talking about?

A I actually thought it was on his left side, looking back. This looks like it's his right side, unless it's, you know, superimposed. But I thought it was on the left side of his body.

Q So you recall some bruising on the left side, but you don't specifically recall that particular mark?

A I do not, no. I thought it was on his left side more like right where your pectoral ends.

Q Did that look like the position he was in when you observed him?

A Yes, very much so.

Q All right, sir.

A But I can also say that this is not my photo because I can tell by the angle I didn't take a head angle, as this appears to be.

Q All right. Thank you. All right, sir, I want to talk about the statements that were collected by Major (b)(6) and Major Paulus from the Marines, the handwritten statements. Do you recall those?

A Yes.

Q Can you please tell us what the facts are surrounding the collection of those statements?

A Essentially, as I understand it, we received word from either division or MEF, probably directly from division just based on the chain of command and the hierarchy we were working under, that we needed -- that an investigation was going to occur and that a couple of investigators were going to come down regarding this matter. They were the two investigators that I spoke about earlier. There was a warrant officer and I believe a staff sergeant. In the context of that, either those two individuals triggered the Marines that were involved in the Whitehorse facility, you know, basically making a written statement about what they knew occurred or what events transpired on or about the 6th of June in regards to this particular individual. I'm a little bit unclear, again, as to, you know, where the initiation was. Whether that was from division, MEF, the investigators on the scene, or if it was internal by our CO saying, start getting written statements and collecting them up. It will facilitate the whole process.

Q Okay. At that time, NCIS hadn't interviewed anybody, to your understanding?

A NCIS, as of 6 June, 7 June, no had not interviewed anyone. At that stage it was a Marine Corps investigation per se with these two individuals that I just noted.

Q Would you characterize it as a criminal investigation or an administrative investigation?

A At that stage, on or about 6 June, 7 June?

Q Yes, sir.

A In my mind it was an administrative investigation or like a JAGMAN investigation would be characterized. It was to determine the nature of what occurred.

Q All right, sir. Was anyone suspected of wrongdoing at that time?

A Yes, the whole unit was suspected. By unit I mean -- let me back up. I don't mean 2/25 as a whole. The individuals that were involved in the facility at Whitehorse were, I believe, suspects at that point.

Q Well -- so you're saying that when the statements are being requested, they are all suspects at that point?

A Well, no. But it's typical to draw a line temporarily between one, one as a suspect and one, one as just being investigated for background reasons. But I know almost from the get go, again, relative to these two generals coming, that General Mattis right off the bat said, he said to Colonel Murphy, our CO, point blank, stepping off the helicopter, "This is the worst thing that's happened to the 1st Marine division." And what other discussions occurred after that, I was not privy to. I was made aware of that statement because then I took the entourage and did our thing with it. But I know General Mattis took Colonel Murphy on the side. I don't know what was discussed. Colonel Murphy only spoke to me about the original statement that general Mattis said, but that then progressed from there forward.

Q All right. And when did that conversation take place?

A That occurred on the tarmac at Tallil Air Force Base at -- sometime around 0930, 1000 on 6 June when these generals flew in. They flew in contemporaneously as it occurred.

Q Well, at that time, did anybody know what the cause of death was?

A No.

Q Had you learned at that time from either Major Paulus or Major (b)(6) that it could have been of natural causes?

A At that time, I hadn't had contact with either of those two Majors because, again, I was getting ready to take care of the other duty of the day.

Q Okay. I guess what this all comes down to, sir, where the rubber meets the road, is that these Marines, including Major Paulus, gave a statement, gave these statements to Major (b)(6)

A Right.

Q These handwritten statements. And they haven't been interviewed by NCIS at this point?

A Right.

Q Were they ordered to give the statements personally?

A That's difficult for me to say. I can say that I did not order it. I don't know what was communicated from Colonel Murphy to the people at the facility because I believe I ended up taking one if not both of the generals and got them out of Colonel Murphy's hair because he had things going on at the CNAOP, the Civil North Air Operation Center, so I don't know how any of that trickled down. As I said several moments ago, I don't know what initiated the need for these statements.

Q But you characterized the Marines of the detention facility at that time as being suspects?

A Right.

Q Why?

A Because essentially you have an individual who is dead that is in your custody, and you have the commanding general of the division saying this is the worst thing that happened to the 1st Marine Division. It was just inferred that people thought that these Marines had done something wrong and they were guilty before proven innocent, and that characterization carried forward thereon and got worse when NCIS got involved.

Q All right. Sir, do you know whether General Mattis's statement was relayed to Major (b)(6) in any way?

A Was what to Major (b)(6)

Q Whether General Mattis's statement that you heard was relayed to Major (b)(6) in any way?

A I'm sure that it was.



Q But you don't have any personal knowledge of that?

A Let me just think for a second. I'm just trying to go over my mind any subsequent meetings that we had that day where those individuals may have been present. I can't think of anything, so I don't know if it was relayed. It probably was at some point from Lieutenant Colonel Murphy the battalion CO down to Major (b)(6) if not to Major Paulus.

Q But you can't say that you ever heard or having personal knowledge of whether Major (b)(6) was ever relayed that information?

A I don't have any personal knowledge of it. I may have though in a subsequent conversation with Major (b)(6) around, if not June 6th, but either the 7th or the 8th8th heard back from Major (b)(6) that he had heard that General Mattis was all up in arms and said this is the worst thing that's happened to the Marine Corps. I mean, that was common knowledge among the staff that General Mattis had uttered those words, you know, very close in time to the event.

Q All right, sir. Now, initially you characterized, in your opinion, that the investigation was more administrative than it was criminal?

A Right.

Q So if you could please just describe why would it be administrative, yet you believe that they were suspects?

A Sometime within that same day of June 6th, when we learned that the two investigators were coming down from MEF or division with the warrant officer and the staff Sergeant, and MEF and/or division directed that we put a U.S. presence on the body at the morgue, it began, in my mind, implicitly if not overtly, become characterized as this is going to be a criminal investigation. I think by that time already rumor mill or whatever you want to call it was already churning that allegations of a broken neck were out there and already there on or about June 6th. By the time I was heading over to the morgue, people I think were already beginning to feel that this was going to be more than just a standard JAGMAN administrative type investigation and it was going to take on more of a criminal nature.

Q Well, sir, obviously, you are an attorney?

A Right.

Q And you were a former prosecutor?

A Correct.

Q And you are aware of 31b UCMJ?

A I don't know that statute by name. I have limited JAG experience tied to TBS and a little bit tied to this event.

Q Well, when the issue came up as taking these written statements from the Marines and they were going to be ordered to do it, didn't anyone ask the question as to whether they should be read their rights or not if they were truly suspects?

A I believe they had been taken already though.

Q Okay. So by the time that you, I guess -- can you please describe exactly what you mean?

A Sure. What I mean by that is very simple. Whenever on June 6th or thereabouts, and by June 6th it may have been the 7th, whatever mechanism triggered these 20 or 30 or however many Marines from the facility to make their written statements. The actual matter basically moved from this administrative, we want to get these things done so we can give them to these two investigators coming, the warrant officer and the staff sergeant from higher, to put somebody on the body, we need to maintain chain of custody, there is allegations that this guy's neck was broken and this is probably going to be a criminal investigation. It all of a sudden sped up or heightened in the scrutiny that we were expecting from higher.

Q All right, sir.

A And again, the comment by General Mattis all went into, you know, the mind set that we had that, look, this is probably going toward a criminal investigation.

Q All right, sir. The timing's important here. So do you know whether the statements were already written and submitted at the time that this realization that there would be suspects -- I mean, what was the timing of that?

A The timing was basically the statements were taken probably hours after this individual was discovered dead and in anticipation of these individuals coming down from higher. They came down from higher around 1800 and it was probably a four to six hour lead time unless knowing that they were coming down. So prior to that,

in the context of look this is an administrative thing, we have to get these statements.

I mentioned Major (b)(6) and Major Paulus, I think Staff Sergeant (b)(6) may have because he was the Staff NCOIC, he may have been the one involved in saying, "Look, we have to get these statements. This will move things along so when the investigators come we can hand them a stack of 20 or 30 statements and we'll go about our business." So after the statements were collected per se, or at least written, in my mind, then they were in, investigators come down and then all of a sudden up at higher, again, remote in time and place, they are determining, look this thing is going to be more than just a JAGMAN. We need to get people on the body, et cetera, et cetera, that is when it started taking on the, at least in my mind, the aura of a criminal investigation. So to me it was after the fact that these guys had made their written statements already, turned them in as they were dutifully trying to do under either (b)(6) or Majors (b)(6) or Paulus's direction.

Q All right, sir. So to the best of your knowledge, these Marines didn't become suspects until after those written statements were collected?  
A That is correct.

TC: That's all I have, sir. Thank you.

#### CROSS-EXAMINATION

Questions by civilian counsel (Mr. Higgins):

Q Good morning, Lieutenant Colonel (b)(6)  
A Good morning, sir.  
Q Keith Higgins. We've met before?  
A Yes, sir. Briefly about an hour ago.  
Q We've also spoken on the telephone?  
A Correct.  
Q As you know I'm Major Paulus's attorney?  
A Right.

Q How long were you a prosecutor?  
A I was a prosecutor for a little over three years Bronx, New York.

Q And as part of your job as a prosecutor, did you ever have occasion to have a case where a criminal defendant had given a statement?  
A Yes, many.

Q And were those statements characterized as confessions?  
A Sometimes.

Q And would the confession become an important part of your case?  
A Absolutely.

Q And in reviewing whether that was an important part, and in reviewing that confession and its use in your case, would you check to make sure that Miranda Warnings indeed had been given?  
A Absolutely.

Q Because you understood that there had been a violation of Miranda, your ability to use that statement was going to be hampered?  
A That's correct.

Q If not completely removed?  
A Correct.

Q But whenever you reviewed those statements, you always did it between the purview or following United States Versus Miranda and any cases following from that to determine whether that statement could be used?  
A That's right.

Q And you understand through your brief familiarity, I think you described it, Article 31(b) is different than Miranda?  
A Again, the nuances of the law, I don't particularly know. I couldn't rattle them off. The Captain mentioned Article 31(b), you are saying Article 31(b) in the context of Miranda. I take Article 31(b) to mean advisement of rights per se.

Q But do you have a background and the angle from which you view things is based on Miranda?  
A It's more based on Miranda, absolutely. Exactly.

Q Okay. Did you ever inspect the detention facility at  
Camp Whitehorse?

A Yes.

Q How many times?

A Once.

Q Do you remember who was the OIC?

A Yes. At the time I inspected it, which was sometime  
around mid April, Major William (b)(6) was the OIC.

Q And you were the XO of the battalion?

A Yes.

Q And during your inspection, if you had seen something  
that you thought needed to be corrected, you could have  
told them?

A Absolutely.

Q He would have had to do that?

A He would have.

Q If you had ever -- during the time both that Major  
(b)(6) and Major Paulus were in charge of the detention  
facility, if you had learned through whatever source  
that something wrong was happening there, could you have  
told them to change it?

A Yes.

Q And they would have had to do that?

A They would have.

Q Did you ever have occasion to do that?

A No.

Q Okay. Are you familiar with an inspection by the  
officers from the MEU?

A Yes.

Q Who was involved in that inspection?

A The inspection by the MEU officers and in particular  
here the MEU commander, Colonel Walthouser, was sometime  
in early to mid April, shortly after we had taken over  
running this facility from the 15th MEU and Colonel  
Walthouser was accompanied by, I believe, Majors  
(b)(6) Powers, the S-3 and (b)(6) the OIC of the  
facility.

Q And did you -- do you know if anyone accompanied Colonel Walthouser?

A Those three.

Q Was --

A Those three Majors I just named.

Q -- was there anybody else from his staff?

A I don't know if anyone else from his staff was there or not. A Sergeant Major perhaps. I don't know if his S-3 with them. I can't speak to that. I was not there. I learned of this -- I knew it was occurring, I was in the COC when Major Powers left to go do this, and I spoke to Major Powers when he returned to the COC half an hour or thereabouts later and I asked him how it went.

Q And did you learn how it went?

A Yes.

IO: Excuse me for one minute.

WIT: Yes, sir.

IO: Who from the 2/25 staff was there, (b)(6)

WIT: Yes, sir. Major (b)(6), H&S Company, Major Powers, the S-3 and Major (b)(6), sir, the OIC of the facility.

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Questions by civilian counsel (Mr. Higgins):

Q And did you learn what Colonel Walthouser's impression of the facility was?

A Yes, sir. I learned it, and again, it was in the context of hearing it verbally from Major Powers.

Q Okay. And what was his impression?

A Major Powers conveyed to me that Colonel Walthouser was resoundingly pleased with the facility. He said it was very professionally executed. He thought that the Marines there were very professional, stellar individuals, and he had nothing but glowing remarks about the actual conduct of it.

Q In questioning with government counsel, you discussed that you had given six or seven verbal taskers?

A Right. I can give you specifically if I can refer to notes.

Q I'm all set. Unless someone else wants to call for them. But that tasker came from Lieutenant Colonel Olsen?

A Yes. Lieutenant Colonel Olsen verbally tasked us following a written notice that we had received a couple of days earlier.

Q And he is the S-3 of the 15th MEU?

A He was at the time. I believe now he is the battalion commander of -- I think 2/1.

Q And his taskers had to be followed by the battalion?

A Absolutely.

Q And was there anything written regarding the detention facility?

A The only thing that was written was the three-day or so written frag order that we received while we were down in Kuwait that was to be sort of a warning order towards what to expect when we got up in that area. That is the one that, again, had six or seven taskers. In terms of when we actually got there, and now I'm talking specifically -- this is early April, maybe the 6th or 7th April, we received a verbal frag order from Lieutenant Colonel Olsen. And in the verbal order, Major Powers and I were there scribbling down the things they were shooting at us, and one of them was be prepared to hold EPWs. I think that was the exact verbiage of it that he communicated to us. We subsequently went back to Colonel Olsen for clarification on that tasker as well as the other taskers and asked for a written order about this. We were turned away. We were told we're not doing a written order.

Q So that could be cleared, if I correctly understand it, by that tasker you went back to Lieutenant Colonel Olsen with Major (b)(6)?

A I think Major (b)(6) went by himself because it would be on S-3 to S-3.

Q Okay.

A I was a former three, so I was very highly involved in the battalion's ops up front.

Q The 2/25 wanted written guidance from the 15th MEU as to how to run this detention facility?

A As to all the tasks.

Q But specifically, they were asked -- you'd asked for written guidance on how the detention facility should be run?

A We actually asked for what had been called for in the original written frag order, which was -- it was a direct tasker to MSSG-15 because they are the subject matter experts in doing this. They were directly tasked to provide assistance to us in starting this thing and running it. I can give you the exact verbiage of that passing to them. We went back to them. MSSG-15 through Major (b)(6) and through Major (b)(6). We went back to the MEU through Major (b)(6) asking for clarification and for assistance on this because we were also trying to get MPs and we were turned away.

Q And were you ever given any written guidance on that tasker?

A Never.

Q In fact, you were denied written guidance on that tasker?

A I wouldn't call it denied in those words, but we were told by the MEU S-3, we're not doing a written frag order. We don't do written frag orders.

Q And in essence was 2/25 left with some devices concerning the detention facility?

A Absolutely. That was a given from the moment we took on that task.

Q You discussed earlier that you had an opportunity to see Mr. (b)(6) body?

A Yes, sir.

Q That was the following morning?

A It was the same day -- well, to be accurate --

Q So that offset of time he -- where the allegations are that his body was found sometime around quarter past 12 in the morning on June 6th?

A Okay.

Q So that would be evening hours, morning time, June 6th?

A Yes, 1800, 6 June thereabouts I saw him.



Q You saw him at 1800. So approximately 18 hours after he --  
A Right. The allegation is a little bit after midnight on 6 June. I saw him 1800ish.

Q Where was the body being kept?  
A It was being kept in a small building located or adjoining the Nasriyah Hospital proper. It was, I guess, what would be a morgue room. It was probably eight to ten feet by eight to ten feet square, maybe 8 to 9-foot ceiling.

Q Was it inside a freezer?  
A There was an air conditioning or compressor unit on -- I believe -- the back of the building. I know when they opened the door, I didn't get a blast of cold, fresh air.

Q What was the temperature outside?  
A 120ish, I would say it was 120ish on that day because --

Q So walking from a 120-degrees into this room, you didn't notice?  
A It was not anything noticeable. I mean, it was cooler, and you could hear the compressor chugging away.

Q So it was inside a room that was cooler than 120 degrees?  
A Yes, it was cooler.

Q At some point, do the members of the guard force from the detention facility get sent to Kuwait?  
A Yes.

Q Who sent them to Kuwait?  
A We were directed by the 1st Marine Division to send them to Kuwait pursuant to this investigation.

Q Did any of those members of the guard force refuse to go to Kuwait?  
A No.

IO: I'm sorry. What was your question?

CC (Mr. Higgins): My question was: Did any of the members of the guard force refuse to have gone to Kuwait?

WIT: Well, I guess -- that's a little bit of a hypothetical in the sense that you can always refuse. You could say, I'm absolutely not going and then get dragged. But in the context of, Hey, Marine, you three need to go to Kuwait" that is my understanding of it. I mean, you can always refuse.

Questions by civilian counsel (Mr. Higgins):

Q Right. Let me ask it better. They were told by someone superior in rank to them to go to Kuwait?  
A Exactly.

Q In fact, Major Paulus was also told to go to Kuwait?  
A That's right.

Q He was told to go to Kuwait by Lieutenant Colonel Murphy?  
A That's correct.

Q And assuming it was a lawful order to go to Kuwait, they would have to have followed that order?  
A Right.

Q Did you ever head to Kuwait?  
A Yes, I did.

~~Q Explain to the investigating officer the circumstances that brought you to Kuwait?~~

A Basically, the Marines began going out to Kuwait, sir, sometime in mid to late June. I don't have the exact date pinpointed. And shortly after their arriving in Kuwait, I received a call on the radio or the phone from either Major Paulus or Major (b)(6) -- to take a little bit of a step back, we were physically located in Nasriyah at the Whitehorse facility.

The naval criminal investigators determined that they were going to conduct this investigation from Kuwait City. Logistically that was a bit of a burden on the unit as a whole because we had very limited assets, HMMWVs, trucks, we're not a tank unit or track unit, we had none of that anyway. Aviation assets were very limited and dedicated primarily to medevacs. So for us, logistically, to get anyone down to Kuwait city was a very tough burden. Because operationly, even though, you know, the main offense of the war was over, we still had severe duties within the entire Di Qhar Province

about 7500 square meters of ground to cover. Different provinces or -- excuse me. Different towns, different leadership there that our five companies basically were dealing with on a daily basis. So we were quite strained in the first instance to get witnesses down there. But we complied as best we could with NCIS through our division to get these guys down there as they were requested. From the outset though, we were asking them if they could not have their investigators come up to the Nasriyah area because it made more sense for us because these Marines still had details and duties within 2/25 that they needed to accomplish. So take them out of Nasriyah and then to undergo the delay that they ultimately experienced was a lot.

But in any event, shortly after they started getting down to Kuwait and we'd get calls for give us these couple of witnesses and then these couple of witnesses, it was very peace meal up front, which as you can appreciate, was a strain on top of everything else because of the limited logistics that we had. But we ultimately just then determined just get everybody down there at once. Rather than having them give us four witnesses, give us these three, give us Major Paulus, give us these. We just got everybody down there at one point. But in that context, we had the Marines down there and, again, I received a call from either Major Paulus or Major (b)(6) saying, look, these guys are down here. The NCIS agents are not giving these guys any advisement of rights. They are yelling at them. They are playing bad cop/bad cop on them. Lieutenant Colonel Miller, who was supposed to be the facilitator acting on behalf of the MEF, I believe he was the MAW SJA, was screaming at our Marines calling them liars, calling Major Paulus a liar.

And in that setting, I conferred with our battalion commander and I let him know what was going on, and I asked for permission to go down there to at least act as somewhat of an intermediary with a little bit of a law background, not UCMJ law, but at least a little bit of a law background to just make sure that any type of fundamental rights were not being trounced upon. And in that with that background, I think it was around June 26th or thereabouts, I actually headed down to Camp Commando in Kuwait.

Q And did you learn that during NCIS interrogations, Marines were being kept in interrogations for long periods of time?

A Yes.

Q Did you learn that they were being denied meals?

A Yes.

Q Did you learn that the witnesses actually had to provide their own food for themselves out of pocket?

A They did. And you have to understand that the concept of leaving Nasriyah where maybe you had a shower within the last couple of days, you were dirty and you were going down to Kuwait City may seem like it was a great thing, but it wasn't in the sense that these Marines then showed up at this five-star Crown Plaza Hotel where the NCIS agents were berthed, and they were made to stay in the lobby in the waiting area for hours on end, if not a couple of days before they were actually interviewed. They were not given any type of money for meals or water. They were basically treated like second class citizens by NCIS.

Q And did you come away at that members were requesting legal counsel?

A I became aware of that, yes.

Q Did you become aware of any reaction to NCIS would have when members requested legal counsel?

A I got more specific detailing of NCIS's reactions, but it was everything, you know, it was everything from cursing to acting exacerbated -- excuse me, exasperated and walking out of the room, to where are you going to get a lawyer. Those type of reactions from NCIS. And I would caveat that all with the introduction of NCIS --

TC: Sir, at this point, can we just get clarification on who this information is coming from specifically.

IO: Sure. Can we clarify.

CC (Mr. Higgins): Sir, you'll have an opportunity on redirect.

IO: I'm asking you to do it. Otherwise, it's irrelevant.

CC (Mr. Higgins): Actually, sir. Two-points on that. One, I'm eliciting information given to general climate in which NCIS was conducting their interviews. Two, this would also be eliciting discoverable information, which as the IO knows, the rule allows defense counsel to do.

IO: I'm asking you to clarify. If you are not willing to do that, then go on to another subject.

CC (Mr. Higgins): The objection is noted.

IO: So you're not willing to do that?

CC (Mr. Higgins): No. I'm just asking my objection be noted.

IO: All right.

Questions by civilian counsel (Mr. Higgins):

Q Colonel (b)(6) can you tell us -- the IO -- which members complained to you about their treatment by NCIS?  
A Sure.

Q I believe you've already mentioned Major Paulus?  
A Right. Well, in the first instance I got a very emotional call from either Major Paulus or Major (b)(6) where they spelled out specifics of Lieutenant Colonel Miller and his conduct, regarding the Marines -- whoever called me mentioned Lance Corporal (b)(6) and having his citizenship threatened. And some type of threat against Lance Corporal (b)(6) if he didn't sign this statement or whatever. To go into specifics, if that is what you are requesting --

Q I'll meet the with the wishes of the investigating officer. HM2 (b)(6), did he every talk to you about any problems?

A Yeah. I interviewed HM2 (b)(6) as well as about 20 Marines and Sailors who were involved in the facility in late July, just prior to our unit leaving when we were in Kuwait at the time, but getting ready to leave Operation Iraqi Freedom to come back to the states. Prior to that, I had spoken with people, the originating phone call that I just mentioned as well as on the ground to some of the Marines to get a flavor for what was going on. And I approached NCIS and Lieutenant Colonel Miller with that as the background, and the command's concern that these Marines and Sailors were

not being treated properly.

We had no desire to impede this investigation back then or now, and as I indicated to Colonel Gallo, we were going out of our way to get these guys down there, to meet their needs, even though we had very, very limited assets, and in consideration with all the other operational commitments. But when we started to get the flavor from NCIS that they were not acting above what with these Marines, the command got very concerned. And we voiced that to NCIS, to Lieutenant Colonel Miller and up our chain of command to the 1st Marine Division.

Q In fact, Colonel (b)(6) did you write anything down concerning these events?

A I did. In late July, as I mentioned before, I either had or then again interviewed virtually every member of either H&S and Weapons that were involved in the facility. I memorialized that in late July with a draft memo that spoke about our concerns, and based on these interviews with these Marines.

Q I want to go back to several questions asked by Captain Francis regarding the events of 6 June. Okay?

Q General Mattis landed in Tallil at what time?  
A It was probably around 0930.

Q 0930?

A Right, 0930, the morning of 6 June.

Q The investigators arrived there at 1800?

A Right around that, maybe a little bit earlier.

Q That is when you went to view the body?

A Correct, at the morgue.

Q You had four to six hours notice that the investigators were coming?

A Me personally or the unit?

Q The unit.

A I would say approximately, because I did not get the call. I believe Major Powers took the radio call or perhaps it was even an E-mail from higher to us saying that these investigators were coming.

Q Four to six hours before 1800 would then be 1200?  
A Approximately.

Q 1400?  
A Again, this is going through either Major Powers or somebody in the COC, not me directly.

Q At 0930 General Mattis was informed of the situation and says this is the worst thing that's happened to this division in Iraq?  
A He was informed of it, actually, probably sometime earlier than that. Because upon Major Powers getting the word from the facility that (b)(6) was dead, Major Powers reported up to higher what had transpired. So in terms of him temporarily setting it more accurately is probably 0400 or 0500 in the morning, and he clarifies to Major Powers that he either sent an E-mail by SIPR or made a phone call up to higher to inform them. Because Major General Mattis knew setting feet on the ground what had occurred. It wasn't like Colonel Murphy walked over to him and said, you know, I have these news for you.

Q Okay. So he finds out earlier. But he says it's the worst thing that's happened to division when he lands?  
A He conveys that to Colonel Murphy almost literally upon getting off the helicopter.

---

Q During the time in Iraq, 1st Marine Division had Marines killed in combat. Didn't they?  
A Unfortunately, yes.

Q And that was prior to 6 June?  
A Yes, sir.

Q Would it be safe to say the general would be aware that Marines had died --  
A Yes, sir.

Q -- in the division. Yet, when he gets s off the plane, the death of (b)(6) is considered by the general to be the worst thing that happened?

TC: Objection, speculation. I mean, that is what he said, but how does he know that is what he was thinking.

CC (Mr. Higgins): He gets off and says this is the worst thing that's happened.

IO: Overruled.

WIT: That is what he said. I think everyone here knows General Mattis to be a man of few words, but he means the words he says. I took that very personally. I took that very hard.

*Questions by civilian counsel (Mr. Higgins):*

Q And the rest of the command found out about it?  
A Absolutely.

Q And earlier you testified this all went into the mind set of all the officers and the whole command in dealing with this?  
A Absolutely.

Q And the statements that Major (b)(6) asked for, the handwritten statements, those were requested -- as far as you know -- those were requested because information had come down that the investigators were coming down to do an investigation?

A That is where it's a little bit of a blur, but yes. Captain Francis asked me about that and I think I clarified that we knew that these guys were coming down. I don't know exactly temporally where the line was drawn or initiated to make these statements.

Q Okay. And again, the investigators, you knew were coming down sometime -- we found -- the command had found out they were coming down between 1200 and 1400?  
A Thereabouts.

Q From division?  
A Right.

Q And that's when the statements were asked for?  
A The statements, I believe, were asked well before that. I think the statements were for, and I answered this to Captain Francis's question, it's a bit of speculation, but I think that these Marines were probably asked upon waking up that morning. I don't recall what day of the week it was, to provide these statements.



Q Would Major (b)(6) be in a better position to know what sparked these requested statements?

A I would think Major (b)(6) Staff Sergeant (b)(6) would probably because I remember hearing either that he was collecting them or he told the Marines because he was the hands on person with the Marines being the Staff NCOIC. Major (b)(6) of course, is the Company Commander several days removed. In terms of the word getting down to him, it would have been from Staff Sergeant (b)(6) to the Marines. Hey, gents, this is what we have to do. So I would say those two would probably be a better source than me.

Q As to what initiated it?

A As the trigger, yes, sir.

Q And before you were discussing this distinction between administrative investigation versus criminal investigation?

A Right.

Q And I think you kept saying it, I just wanted to make sure we got this right, those were your impressions?

A Right. Well, they were my impressions but, again, I have to speak about the general feeling or aura that the battalion staff had, you know, against the back up of General Mattis said and then against the backdrop of, you know, go take pictures, they are going to do an autopsy. I guess that was another significant event in the chain of the investigation that it was going to go to the autopsy level. But you are asking me my recollections and what I had formed in my mind and that is what they were.

CC (Mr. Higgins): Thank you very much.

IO: Mr. Zimmermann. Before you begin, Mr. Zimmermann, how long would you anticipate your cross to be?

CC (Mr. Zimmermann): If it's one small --

IO: I'm not trying to rush you. I'm just trying to get an idea. It's 1130. We can break, it it's going to be long and Lieutenant Folk has some extensive cross, we can break now and come back or we can push forward and break later. I'm not trying to.

CC (Mr. Zimmermann): This is real brief, from my perspective, sir.

CROSS-EXAMINATION

Questions by civilian counsel (Mr. Zimmermann):

Q Good morning, sir.

A Good morning.

Q I want to touch again on, I know we covered this with Mr. Higgins, but at some point during the afternoon of 6 June, based on the general's comment, the word that investigators from MEF were coming down, or word that you needed to put a guard on the body, you became aware sometime that afternoon that this is a criminal investigation?

A I was beginning to feel that it was. We were also directed to take photos. Captain Francis showed me earlier these photos in evidence already. That was the same context that I took the photos.

Q And prior to meeting the investigator and going through the investigators to the actual morgue building, you were informed that photographs were going to be taken?

A I talked to -- the S-3 spoke with me and said MEF called, the division called and they also want us to take some photos.

Q Okay. And that is when you used the battalion's digital camera?

A Yes.

Q Plus the CID investigators -- or the MEF investigators had their own photographs taken. Correct?

A I believe they had their own camera.

Q Do you know what happened to battalion photographs that were taken of the body at that point?

A The battalion's photos are in Garden City. I believe they are preserved on one of the S-3 officers' laptops or be burned to a CD.

Q You indicated that, at least from your impressions of viewing the body at that point after holding him. I guess we're talking 18 hours after the death?

A Right.

Q You didn't notice signs of decomposition. Is that correct?

A I did not. But I characterize that in the first instance as I'm an attorney, I'm not a medical expert.

Q The body was turned though where you could see the back?

A Yes. Between we turned the body over.

Q Are you familiar are lividity from your time as a prosecutor?

A No. I didn't do a whole -- I did a couple of homicides, but the bodies were basically characterized as relatively fresh.

Q Okay. Going back to the point of that afternoon, you were informed between 1200 or 1400 that the investigators were coming down from MEF. If Major Paulus, it was sometime that afternoon, sometime that afternoon that Major Paulus had ordered these Marines to give these statements, would that have been about the same time that you came to the realization that it was a criminal investigation?

A Again, I think that the statements were ordered earlier. Again, in the context of these guys are coming down to investigate this.

Q Let me ask you this: Based on the actual Marines involved with writing these statements --

A Right.

Q -- Talked to either Staff Sergeant (b)(6) Major Paulus or Major (b)(6)

A Yes.

Q -- would you agree with me that those three Marines, Staff Sergeant and the two Majors were in a position to actually know when they informed the guard force to take those statements?

A They are definitely in a position of that. And part of my being involved with the general's visit had me outside of the COC or outside of the CP proper, so I don't know what and when Major (b)(6) as the S-3 was communicating down to Whitehorse and directing them to do things. It's probably worth clarifying there.

Q So it was Major's (b)(6) testimony that the order that was given to collect these statements sometime after the investigators were already in route?

A Right.

Q Would you disagree with that? Would you have any reason to doubt?

A No, definitely not.

Q Same thing from Major Paulus's perspective. The order was given that afternoon after the investigators were in route. Is there anything that would give you reason to doubt that?

A Nothing.

CC (Mr. Zimmermann): That's all I have, sir.

IO: Thank you. Lieutenant Folk?

DC (1stLt Folk): Yes, sir.

CROSS-EXAMINATION

Questions by defense counsel (1stLt Folk):

Q Good morning, sir.

A Good morning.

---

Q I want to draw your attention first -- actually, to Sergeant Pittman. You knew him both once you got to Iraq, but also prior to deploying?

A I did.

Q And he was activated approximately a year before the 2/25 battalion picked up and left for the Gulf region?

A That is correct.

Q And you had an opportunity to see Sergeant Pittman doing his, I guess, his day-to-day responsibilities within the battalion during that period of time prior to deployment?

A I did.

Q And he worked as a machine gun instructor as well as working in the armory. Right?

A Correct.

Q And he actually was used as an instructor for the other Marines within his company?

A On many occasion. And I believe maybe even outside of the company.

Q And, sir, you are aware of the NAM that he received for performance of these duties prior to deployment?

A I was aware of it, yes.

Q And that was based on his performances of these things we've been discussing?

A Yes.

Q And based on your observations of him, you'd agree that he was a good NCO within your company and your battalion?

A I would go beyond that and say he is an outstanding NCO. I believe he still is.

Q Sir, let me draw your attention away from Sergeant Pittman for a second and talk to you about the detention facility at Camp Whitehorse?

A Right.

Q You weren't there everyday, obviously. Right?

A At the facility?

Q Right.

A No, I wasn't at the facility everyday. And it may have been elicited earlier, the COC or the CP was co-located at Whitehorse from when we first arrived in early April through maybe early to mid May, at which time we left Whitehorse and then located the COC and the CP to the northeast of Whitehorse.

Q Despite not being there everyday, you were aware, generally, of the day-to day going on there?

A Right, I was. I was in contact with Major (b)(6) almost daily.

Q And you were, again, during those day-to-day, being aware of the day-to-day goings on, you were aware of what kind of Iraqi detainees were coming in and leaving?

A Absolutely.

Q And part of the that awareness and what kind of Iraqi detainees included an awareness that the majority of these folks weren't prisoners of war, they were just criminals. Right?

A Well, I mean, and some were EPWs because they were captured and they had their military ID on them or a uniform in the bag when they were stopped at a vehicle checkpoint.

Q It wasn't uncommon, based on your knowledge, what was going on there to just have common Iraqi criminals processed as detainees?

A Absolutely not uncommon. And to give it the full scope or appreciation here, one of the main things we were doing in Iraq at this time, especially in Nasriyah, was trying to restart the police force and restart the court system in conjunction with that. Because you couldn't have one without the other. And as the occupying force you were charged under international law, I believe, to restart the police force and -- basically maintain security and I guess stability in the region.

So as part of that, an FBI agent within our unit got with the Nasriyah counsel and started to work on getting a police force started while the MEU was still there. In conjunction with that, we were trying to start a court system so there would be at least some assemblance of a system in place. So I don't mean to keep rambling here, there was no facility or police holding cell or jail to deal with criminals, so they, by default, the staff planned it out, had to come through Whitehorse. That is a very long answer to your question that we often got criminal detainees, but you have to understand the backdrop of it.

Q Sure. And some of those criminal detainees are people charged with violent crimes?

A Absolutely. We had a guy cut off his sister's nose or his wife's nose or something. That is the prisoner that we had, or detainee, I should say. Excuse me.

[END OF PAGE]

Q And the Marines that were working within this facility hadn't been provided with any kind of training on how to administer that kind of situation with civilian criminals. Right.

A I mean, we limited expertise there. We had -- and by design, we utilized them, Sergeant Pittman who has a federal (b)(6) Lance Corporal (b)(6) who has a (b)(6) background to help with the administering of these individuals, bringing them through, how do you search them, where do you look when you pat them down. And that actually bore very positive fruits for us because we caught a guy with razor in his mouth. I think they caught myriad other weapons on individuals coming in. Like you said, these were often criminals, often, not always but often.

Q So it would be fair to say that the way this camp was operated wasn't something that came from the top down, it was actually something kind of generated from the bottom level in terms of the day-to-day running of the facility?

A Well, in terms of the day-to-day running of it, I mean, the original tasker -- as Captain Francis elicited -- was from the 15th MEU. In other words, this wasn't something that we just said, "Hey, can we run a facility or we need to run a facility."

Q Right. But the 15th MEU didn't say, here's how to deal with Iraqi criminals. Right?

A Well, I would only caution there that when we physically took the facility over from the 15th MEU, and by taking it over from the MEU, the physical running of it and the physical facility itself, there was a turnover done between the 15th MEU hat, and that included some MPs that were part of the 15th MEU and our personnel. And it was directly from those individuals or via Staff Sergeant (b)(6) who was the original Staff NCOIC of the facility. He left the scene several days later after passing things on or talking things through with his right hand man, Sergeant (b)(6) because he ended up having a hernia. He was medevac'd to Tallil thinking he would be there for two days and he got medevac'd back to the United States. We never saw him again, from mid April until we got back in August.

Q And so what you are essentially saying is that that was the extent of the turnover for your battalion?

A That was the mechanics of the turnover. What was communicated though or, you know, observed by HET and the MPs as to do this, don't do that, this works, this doesn't work, we want you to do this and that, that's another question which --

Q I have --

A You have not asked me.

IO: Are you going to ask him?

DC (1stLt Folk): Yes, sir. May I follow up on that, sir?

IO: Sure.

WIT: I've been cautioned that I get a little long in the mouth here.

IO: Please.

WIT: But, well essentially from Staff Sergeant (b)(6) and perhaps Staff Sergeant (b)(6) it was made clear to the command that the HET individuals at this time, I think there was a warrant officer (b)(6), I don't remember these guys. They didn't wear name tapes. They didn't wear rank. They were very secretive by nature what they were doing and maintaining their anonymity with their interviewing of Iraqis. There was some MPs on that HET staff, so that collective group of individuals passed on information to (b)(6). And as I understand it, they passed on, look we're the guys doing the interviewing. You guys don't do the interviewing. You're not Dick Tracy. You're not here to figure out, you know, where Saddam's hiding. We do that. And for us to do that, we want these guys to be worn down.

And it's my understanding, this is well after the fact -- as I explained to Captain Francis -- that the HET MP individuals from the 15th MEU passed on to our Marines -- and (b)(6) by the way, is a carpenter. That wear 'em down, don't give them food, don't give them water and make them alternate standing and sitting until we get there because we want to be the good cops and you guys can be the bad cops. That was communicated in summary to our Marines and Sailors that were part of this facility. And it was by Staff Sergeant (b)(6)



maybe Sergeant (b)(6) was present, and then that got passed on to the next generation. By next generation I mean the OIC became part of this after the fact, in terms of the temporary relationship with Major (b)(6). He was not part of this up front. He was added into the mix later on as this thing grew and we determined that we needed an OIC. But it was to (b)(6) and then passed on to (b)(6).

Questions by defense counsel (1stLt Folk):

Q Okay. Sir, let me direct your attention finally to this situation when you arrived at the body of (b)(6). Was this a secured facility that you arrived in?

A At that time, it was. And I think I mentioned earlier that we were told by higher to get an American presence on the body after we had taken him to the morgue. I testified earlier to some of Captain Francis's questions.

Q Was that presence, that American presence on the body, was that there when you arrived?

A Yes.

Q Are you aware of how long it had been there at that point and time?

A Well, the body --

Q I'm sorry. I meant the guards.

A The guards had been there for a couple of hours, and we, me and the staff, had some eyes that the deceased body was at the morgue anywhere from six to eight hours unguarded by a U.S. presence. In other words, the body went from Whitehorse to our BAS -- as Captain Francis elicited -- from our BAS to the morgue. When it got to the morgue, it was turned over to the Iraqi authorities just as we would turn over any other Iraqi body that we had encountered.

Q And that's --

A From that point to probably somewhere around 1600 to 1700, there was nobody on there. But then we got a tasking from higher to get an American presence -- as I mentioned earlier -- and we detailed the MP unit that was part of our battalion, part of the task force to go do that. And when I physically arrived, there were two soldiers there guarding the body -- or guarding the building that the body was in.

DC (1stLt Folk): Okay. Thank you. No further questions.

IO: Captain Francis, do you have any redirect?

TC: Yes, sir.

IO: How long?

TC: About three or four questions, sir.

IO: Okay. So about an hour?

TC: That's the way it's been going.

REDIRECT EXAMINATION

Questions by the government:

Q Now, sir, you said that there was -- how many hours again between the time that you learned that (b)(6) had died and then General Mattis walking off the tarmac and making this comment to you?

A I learned that around 0500ish on the morning of June 6th. Major General Mattis and his staff that was flying in came in, I believe around 0930. So, you know, roughly four to five hours later.

Q Do you know where they came in from?

A Yes. They were coming in from, I believe, the division headquarters at the time was at Diwaniyah, which was about a couple of hundred kilometers north of where we were in Nasriyah.

Q Now, was there some sort of flash report or some sort of report that was made to General Mattis that he would have some idea of what was going on there?

A You'll have to ask Major (b)(6) about what was actually communicated because, as I indicated earlier, Major Powers was woken up by the watch, the COC watch, in the very early hours of 6 June that this individual had died at Whitehorse. I don't know exactly what Major Powers did. Did he send a separate e-mail? Did he get on the radio telephone that we had? But he did communicate something up to higher that -- in reporting, just as you would report anything to higher, you know, enemy contact et cetera, et cetera. He communicated something up.

Q You described how when the General made that comment, it affected you negatively?

A Absolutely. I thought it was a rush to judgment.

Q Now, did you -- were you surprised that he was even commenting at all since it was such a short period of time?

A No, I wasn't surprised. As I said earlier, Major General Mattis is a man whose words you know. I mean, he communicates well. No better friend, no worst enemy. It was the manner that he instilled in us. And for him to say that, I took that as, you know, he's bedded this somewhat through his staff and I was not surprised. I was surprised that he would have felt that strongly about it, considering many of the other deaths, including American deaths.

Q Well, I guess the point being, sir, if the only information that's gone to General Mattis is from 2/25 in some form or fashion --

A Right.

Q -- and then the general's walking off the helicopter plane and makes a comment, did you -- based on that -- try to go back to Major (b)(6) to figure out what the heck did we tell him?

A Well, this didn't come out too much earlier, but -- because it wasn't asked. You can't divorce the situation from the background of (b)(6) which was a couple of days worth of intelligence coming to our battalion from higher. Senior Baath party official located to your southeast in the Ash Shatrah region involved in the 507th ambush, has a U.S. M-16 on him. We acted on that intelligence with a platoon, minus patrol from our 81 millimeter platoon from Weapons Company, captured him and I believe two others. The M-16 is there with him when he is captured. Brings in, we report that up. So in the first instance we are reporting up to division a very successful, very positive development. So then the back swing of that is, by the way, he's dead.

Q Okay.

A Do you see what I'm saying?

Q Yes, sir.

A Just for the context --

Q So again, let's go back and -- the context of the  
A statement made by the General?  
Right.

Q In your opinion, your knowledge of (b)(6) was he an  
A important intelligence source?  
Absolutely, and in fact --

Q And now this important intelligence source, and General  
Mattis steps off the plane there to visit Whitehorse, is  
A dead?  
Right.

Q Okay. And then could you just repeat what general  
Mattis said again. What was it?  
A Let me try to get the words as exact as I can. It was  
along the lines of "This is the worst thing that's  
happened to the 1st Marine Division in this war."

Q Okay. Now did he use any words suggesting that he  
thought that he thought that (b)(6) was dead -- not  
that he was dead, but that he had been murdered or  
Marines had mistreated him. Did he say anything that  
indicated that he thought the Marines had mistreated him  
or just that he was a loss of intelligence source, or  
anything like that, or was that just it?  
A Well, in terms of the words were or paraphrased or  
~~exact, those were the words. But it was very much~~  
inferred that you guys screwed up. You guys did  
something wrong. Because I talked to Colonel Murphy  
probably within minutes of the General saying those  
words to him. I talked to Colonel Murphy later in the  
day, and I know Colonel Murphy was upset that the aura  
around this thing was negative.

Q All right.  
A As in implicating wrongdoing and implicating criminal  
actions by the Marines or Sailors of 2/25.

Q All right, sir. Now, Lieutenant Folk asked you a series  
of questions as to the distinction of criminals and  
EPWs?  
A Right.

[END OF PAGE]

Q At the Whitehorse detention, no Article 5 hearings were being conducted under the Geneva Convention there. Correct?

A Okay. Now you are throwing UCMJ Articles at me that are almost Greek.

Q Was there any official hearing being conducted to determine whether someone should receive EPW status or not?

A No. And again, as the holding facility proper, our involvement was to hold. HET, both the 15th MEU HET that originally started there at Whitehorse and then the subsequent HET team that came in there after were the ones that were determining who did what, subsequent categorization came out of these individuals. But it was really the function and duty of HET to do that, it wasn't something that was on our Marines and Sailors.

Q All right, sir. So --

IO: Is this your third or fourth question? Just messing with you. Go ahead.

Questions by the government:

Q I guess the point being, cutting to the chase here is that when (b)(6) was the facility, your battalion SOP states that individuals are supposed to be treated as EPWs unless the battalion commander indicates otherwise.

A Correct, sir, that is what we just looked at in the SOP? Yeah, if you're saying that's what's in there, I'll take your word for it right now. But I'll take a look at it. I don't know that that's the exact distinction in a sentence or two.

Q All right, sir. Let me just show it to you real quick.  
A I mean, it may be a moot point, but.

Q I mean it's right here, that bolded portion there.  
A "Any person taken prisoner or in turn by 2/25 will be considered an EPW and treated in accordance with the Geneva Convention, unless ordered otherwise by the battalion commander." Okay. "Any person encountered under AO will be considered a threat until properly identified by the S-2." Okay.

Q All right, sir.  
A Yes.

Q So, (b)(6) is there. To your knowledge, did Lieutenant Colonel Murphy ever tell anybody that (b)(6) was to be treated any way other than as an EPW?

A I don't know of that.

TC: Okay. That's all I have.

IO: I just have a follow up.

WIT: Yes, sir.

IO: Do you understand the distinction?

WIT: Yes, sir. Between EPWs and detainees? Yes, sir.

IO: Right. And one may be treated one way and another may be treated and handled in a completely different way.

WIT: Yes, sir.

IO: With the EPWs being afforded the highest status of treatment?

WIT: Yes, sir.

IO: And Lieutenant Colonel Murphy said, okay, we're going considering him to be a common criminal so you can treat him in some other fashion other than the way an EPW would be treated. He never said that?

WIT: I don't know that he said that, sir.

IO: Okay.

WIT: I was not privy to that and I would have my doubts that he would.

IO: Now, you never heard that that was being --

WIT: Communicated --

IO: -- communicated from Lieutenant Colonel Murphy on down?

WIT: Not in regards to (b)(6) In regards to other EPWs or detainees, I think that those got -- those were determined, you know, on a case-by-case basis by the HET -- as Captain Francis had asked. I would also keep in mind that with (b)(6) and based, you know, the timing of when he came into Whitehorse and several hours later he's found dead, that there may not been a big window to make that determination. I don't think that even HET, for instance, interviewed (b)(6) I think that they were looking to interview him the next day or something. I don't know. That would just be speculation on my part. But it was a short window within which Colonel Murphy would have made this determination. So I don't know when it was made.

IO: Any recross at this point?

CC (Mr. Zimmermann): No, sir.

CC (Mr. Higgins): No, sir.

DC (1stLt Folk): No, sir.

IO: Any need to have this witness remain in the area for recall?

CC (Mr. Higgins): No, sir.

CC (Mr. Zimmermann): No, sir.

IO: Lieutenant Folk?

DC (1stLt Folk): No, sir.

IO: Okay. Colonel (b)(6) you are free to leave. You are dismissed and you may resume your duties, or profession back in (b)(6) I just caution you not to discuss your testimony with anyone other than the attorneys involved in this investigation or any related information, because there are others.

WIT: Yes, sir.

IO: I'd also caution you against discussing this case, particularly with the members of the media --

WIT: Yes, sir.

IO: -- who are present. I do not order you not to do that. That is entirely your right if you want to do that. But if you are going to talk to anyone, you shouldn't say anything that you would not want to have repeated --

WIT: Yes, sir.

IO: -- under oath in a court of law.

WIT: Right.

IO: Okay. You are dismissed.

WIT: Thank you.

IO: Thank you.

All right.

Gentlemen, is there anything that we need to discuss before we break for chow?

Anything administrative we should talk about first?

TC: We need a court reporter.

IO: All right. It's two minutes to noon. We'll stand in recess for an hour and two minutes to 1300 using that clock as our guide. We'll resume at 1300.

Who is the next witness that you have?

TC: Lieutenant Colonel (b)(6) sir.

IO: So we'll need a court reporter for her. So if you could make those arrangements.

We're in recess.

The Article 32 Investigation recessed at 1158, 27 January 2004.





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5800  
TC/LJF  
30 Jun 04

From: Trial Counsel  
To: Detailed Defense Counsel

Subj: BILL OF PARTICULARS ICO U.S. V. SERGEANT G. P. PITTMAN  
(b)(6) USMCR

Ref: (a) DDC ltr dtd 12 May 04

1. Pursuant to reference (a), the government is providing this bill of particulars. The response will address each corresponding paragraph in the defense request.

a. Paragraph 2(a) (Dereliction of Duty/unknown prisoners)- Sergeant Pittman was a guard at the Camp Whitehorse Detention Facility from about 1 April 2003 to about 1 July 2003. His duties were to search incoming prisoners and guard prisoners. This included a duty to protect prisoners from harm caused by his subordinates. This included a duty to avoid harming the prisoners himself without just cause. This included reporting to his superiors the condition of a prisoner if it appeared a prisoner was ill or injured.

b. Paragraph 2(b) - Sergeant Pittman's duties began about 1 April 2003 and continued until about 1 July 2003.

c. Paragraph 2(c) - Sergeant Pittman was assigned his duties as a guard by Major (b)(6) OIC of the detention facility. These duties remained in place unchanged until Sergeant Pittman departed the detention facility about 1 July 2003. His duties to avoiding harming prisoners, avoiding allowing his subordinates to harm prisoners and as to reporting the injury or illness of a prisoner arise from the Geneva Convention of which the U.S. is a signatory. In addition, 2/25 in its Battalion Standard Operating Procedure informs its Marines to abide by the Geneva Convention.

d. Paragraph 2(d) - Major (b)(6) was responsible for training the guards at the detention facility. Also, the guards received basic EPW training at Camp Lejeune. Additionally, the government believes Sergeant Pittman's (b)(6) and his common sense would dictate that he should not nor should he allow his subordinates to harm prisoners, and he should notify his superiors if he was aware that a detainee was ill or injured.

e. Paragraph 2 (e) - Sergeant Pittman was willfully derelict in the following ways:

(1) He allowed PFC (b)(6) his direct subordinate to strike an unknown Sheik as described in PFC (b)(6) Art. 32 testimony;

(2) He allowed PFC (b)(6) to strike unknown Iraqi prisoners as described in LCpl (b)(6) signed sworn statement to NCIS;

(3) He struck an unknown (b)(6) as described in PFC (b)(6) Art. 32 testimony;

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(4) He struck two unknown Iraqi prisoners as described in LCpl Rodney's NCIS statement;

(5) He roughly pulled three Iraqi prisoners from a HUMMV while they were flexi-cuffed and sandbagged as indicated in LCpl (b)(6) signed sworn statement to NCIS;

(6) He struck two unknown Iraqi Prisoner's other than the (b)(6) as testified to by Sergeant (b)(6) at Sergeant (b)(6) deposition.

f. Paragraph 3(a) (Dereliction of Duty re: (b)(6) - Same as answer in paragraph 1a above.

g. Paragraph 3(b) - His duties in general were assigned as indicated in paragraph 1b above. His specific duties as to Mr. (b)(6) arose on 4 June 2003, when he came on duty at or around 0400 and continued thereafter.

h. Paragraph 3(c) - Same as answer provided in Paragraph 1c above, except to add his superiors at that time were Major Paulus and SSgt (b)(6), so they would have been responsible for ensuring the timing of the shifts worked by the guards to include Sergeant Pittman.

i. Paragraph 3(d) - Same answer as Paragraph 1d above.

j. Paragraph 3(e) - Sergeant Pittman was derelict in his duties by striking Mr. (b)(6) on at least two occasions as testified to by PFC (b)(6) at the Art. 32 hearing. He was also derelict in allowing PFC (b)(6) to strike Mr. (b)(6) and apply pressure points as testified to by PFC (b)(6). Lastly, he was derelict in not reporting Mr. (b)(6) ailments to superiors as testified to by PFC (b)(6) at the Art. 32 and by LCpl (b)(6) at his deposition.

k. Paragraph 4(a) (Assault and battery of unknown Iraqi's) - See paragraph 1e above.

l. Paragraph 4(b) - These assaults took place at or near An Nasiriyah, Iraq at or near the Camp Whitehorse detention facility.

m. Paragraph 4(c) - See paragraph 1e above.

n. Paragraph 4(d) - Assault consummated by a battery is alleged for each incident described.

o. Paragraph 4(e) - Sergeant Pittman struck the (b)(6) in the stomach, chest and legs area with a knee, foot and fist as described by PFC (b)(6) at the Art. 32 hearing and by Sgt (b)(6) at his deposition. He struck the two Iraqi's indicated in LCpl (b)(6) statement in the back and rib area with his fist. He struck the individuals indicated in LCpl (b)(6) statement by pulling them by the legs onto the ground off a HUMMV. There were three individuals seen treated in this manner by LCpl (b)(6) according to his statement. Sergeant Pittman struck the other two detainees witnesses by Sgt (b)(6) in the legs and stomach and ribs with his feet, knees and fists as testified to by Sgt (b)(6) at the deposition.

p. Paragraph 5(a) - The assault and battery on (b)(6) occurred at or near Camp Whitehorse Detention Facility.

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q. Paragraph 5(b) - The evidence of the punch comes from PFC (b)(6) Art. 32 testimony. He described it as a back-hand with a fist. He could not be definite as to which hand.

2. The above information is the most up to date information the government has at this time on these charges. If more or different information is learned prior to trial the government will provide immediate notice to the defense.



L. J. FRANCIS  
Major  
U.S. Marine Corps

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File  
CDC

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CERTIFICATE OF SERVICE

I hereby certify that on 30 Jun 2004, a copy of this bill of particulars was served via electronic mail on the detailed defense counsel in the above entitled case.



L. J. FRANCIS  
Major  
U.S. Marine Corps

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UNITED STATES MARINE CORPS  
GENERAL COURT-MARTIAL  
SIERRA JUDICIAL CIRCUIT

UNITED STATES

v.

GARY P. PITTMAN

(b)(6)

Sergeant

U.S. Marine Corps

REQUEST FOR BILL OF  
PARTICULARS

12 May 2004

1. **Nature of the Motion:**

The defense respectfully requests that the government provide a bill of particulars regarding the following charges and specifications currently pending against Sergeant Pittman, the accused:

2. Charge I, Specification 1: Sergeant Pittman is charged with willful dereliction of duties. He is charged with willfully failing to properly safeguard the physical health, welfare, and treatment of unknown Iraqi prisoners of the Camp Whitehorse detention facility.

a. ~~What duty or duties was Sergeant Pittman assigned while a member of the 2/25 assigned~~  
to the Camp Whitehorse detention facility.

b. When were those duties assigned?

c. By whom, or by what lawful order or custom of the service were they assigned?

d. What training, if any, was Sergeant Pittman provided regarding the proper execution of those duties?

e. In what manner was Sergeant Pittman derelict in the performance of the duties alleged in specification 1 of Charge I.

3. Charge I, Specification 2: Sergeant Pittman is charged with willful dereliction of duties. He

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is charged with willfully failing to properly safeguard the physical health, welfare, and treatment of (b)(6), as it was his duty to do.

a. What duty or duties was Sergeant Pittman assigned while a member of the 2/25 assigned to the Camp Whitehorse detention facility as they regarded (b)(6) on or about 4 June 2003.

b. When were those duties assigned?

c. By whom or by what lawful order or custom of the service were they assigned?

d. What training, if any, was Sergeant Pittman provided regarding the proper execution of those duties?

e. In what manner was Sergeant Pittman derelict in the performance of the duties alleged in specification 2 of Charge I.

4. Charge II, Specification 1: Sergeant Pittman is charged with assault by unlawfully striking unknown Iraqi prisoners between on or about 1 April 2003 and 30 June 2003.

a. Which prisoners is the government alleging that Sergeant Pittman unlawfully struck?

b. ~~Where did these alleged assaults take place?~~

c. How many assaults is the government alleging?

d. Is the government alleging simple assault or assaults consummated by battery?

e. Where on the bodies of these alleged Iraqi victims is the government alleging that Sergeant Pittman struck them?

5. Charge II, Specification 2: Sergeant Pittman is charged with assault by unlawfully striking (b)(6) by punching him in the body with his hands.

a. Where in An Nasiriyah, Iraq, is the government alleging that his assault took place?

b. Is the government alleging that Sergeant Pittman struck (b)(6) with one hand or both

hands?

The defense respectfully requests a written response to this request for a bill of particulars.

W. A. FOLK

/S/

+++++

I CERTIFY THAT I SERVED A COPY OF THIS BILL OF PARTICULARS ON  
GOVERNMENT COUNSEL ON 12 MAY 2004 VIA ELECTRONIC MAIL.

W. A. FOLK

/S/

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## CURRICULUM VITA

30 June 2004

NAME: JIMMY WADE GREEN, M.D.

OFFICE ADDRESS: Naval Medical Center San Diego  
34800 Bob Wilson Drive  
San Diego, CA 92134  
Phone: (619) 532-8211

DATE REPORTED: 20 August 2002

MILITARY SERVICE: UNITED STATES NAVY

Continuous Active Duty since: 14 JUNE 1980

RANK: CAPTAIN (O-6), MEDICAL CORPS

DATE OF RANK: 01 AUGUST 1996

DESIGNATOR: 2100 NOBC: 0150

SUBSPECIALTY CODE: 1680J

CURRENT PROFESSIONAL STATUS and Hospital Staff Privileges:

- Active Duty Navy,
- STAFF PATHOLOGIST at Naval Medical Center San Diego, CA
- REGIONAL ARMED FORCES MEDICAL EXAMINER.

### EDUCATION:

PRECOLLEGE: SAEGERTOWN AREA SCHOOLS, SAEGERTOWN, PA. 1960-1972.

COLLEGE: MIDDLE TENNESSEE STATE UNIVERSITY  
MURFREESBORO, TN. AUG 1972 - MAY 1976.  
BACHELOR of SCIENCE - CHEMISTRY

MEDICINE: UNIVERSITY OF TENNESSEE Center for the  
Health Sciences, MEMPHIS, TN. JAN 1977 - JUNE 1980  
Doctor of Medicine, (M.D.)

MEDICAL INTERNSHIP: BASIC MEDICINE, TRANSITIONAL @  
NAVAL REGIONAL MEDICAL CENTER  
(Portsmouth Naval Hospital)  
PORTSMOUTH, VA. 01 July 1980 - 30 June 1981

RESIDENCY: PATHOLOGY (combined Anatomic and Clinical)  
29 JULY 1987 thru 29 JULY 1991  
~~PORTSMOUTH NAVAL HOSPITAL~~  
PORTSMOUTH, VA. 23708-5000  
Program Director: William Bruce Ross MD  
Phone: (757)-953-1701

FELLOWSHIP: FORENSIC PATHOLOGY  
12 AUGUST 1991 - 31 AUG 92  
ARMED FORCES INSTITUTE OF PATHOLOGY (AFIP)  
WALTER REED ARMY MEDICAL CENTER  
WASHINGTON, D.C. 20306-6000  
PH: 301-319-0000 Richard FROEDE M.D.

### MEDICAL LICENSES:

State of GEORGIA: No. 26285; since June 1985

State of FLORIDA: No. ME 0047739; since JAN 1986

BOARD CERTIFICATION: (via American Board of Pathology)

1. Combined Anatomic and Clinical Pathology (AP/CP), 11/20/91
2. Forensic Pathology (FP), 5/31/93

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MEDICAL EXPERIENCES		
FROM/TO	DUTY STATION	POSITION
AUG 02 / PRESENT	NAVAL MEDICAL CENTER SAN DIEGO, CA	STAFF FORENSIC PATHOLOGIST/ REGIONAL MEDICAL EXAMINER
MAY 00 / JULY 02	OKINAWA NAVAL HOSPITAL	DIR ANCILLARY SRVC, Regional ME
JUNE 98/ APRIL 00	NAVAL MEDICAL CENTER - PORTSMOUTH, VA	LABORATORY DIRECTOR and DEPARTMENT HEAD
OCT 92/ JUNE 98	NAVAL HOSPITAL - PORTSMOUTH, VA	FORENSIC & AP/CP STAFF PATHOLOGIST
AUG 91/ AUG 92	AFIP, WALTER REED ARMY MEDICAL CENTER, WASH, D.C.	- FELLOW, FORENSIC PATHOLOGY
JULY 87/JULY 91	PORTSMOUTH NAVAL HOSPITAL - PORTSMOUTH, VA. 23708	PATHOLOGY RESIDENT
JUNE 85/JUNE 87	NAVAL DIVING - and SALVAGE TRAINING CENTER, PANAMA CITY, FL	UNDERSEA MEDICINE OFFICER & INSTRUCTOR
SEP 84/MAY 85	COMSUBRON SIXTEEN - NAVAL SUBMARINE BASE KINGS BAY, GA.	RAD.HEALTH SPEC. UNDERSEA MEDICINE
JUL 82/SEP 84	USS SIMON LAKE (AS-33) - NAVAL SUBMARINE BASE KINGS BAY, GA.	UNDERSEA MEDICINE RAD. HEALTH SPEC.
JAN 82/JUN 82	NAVAL UNDERSEA MEDICAL - INSTITUTE, GROTON, CT.	STUDENT UMO
AUG 81/JAN 82	NAVAL SUBMARINE HOSPITAL NAVAL SUBASE, GROTON, CT.	E.R. PHYSICIAN
JUL 80/JUN 81	NAVAL HOSPITAL - PORTSMOUTH, VA.	MEDICAL INTERN
JAN 77/JUN 80	UNIVERSITY of TENNESSEE - CENTER for the HEALTH SCIENCES MEMPHIS, TN.	MEDICAL STUDENT HEALTH SCHOLARSHIP

APPOINTMENTS: REGIONAL ARMED FORCES MEDICAL EXAMINER, since 1993.

TEACHING EXPERIENCES:

1. Naval Medical Center San Diego, CA – teach pathology residents, educate NCIS Special Agents in forensic pathology, currently
1. Associate Professor of Pathology at Eastern Virginia Medical School; taught pathology to medical students from August 1994 to April 2000.
2. Naval Hospital, Portsmouth, VA -- teach pathology residents Oct 1992 to April 2000.
3. Naval Diving and Salvage Training Center, Panama City, FL  
Taught Navy Physicians, Master Divers, Diving Officers, and First Class Divers from May 1985 to June 1987.
4. Naval Aerospace Medical Institute, Pensacola, FL -  
Taught two courses of half-day each in "Introduction to Diving Medicine" to prospective Navy flight surgeons from 1985 through 1987.
5. Federal Law Enforcement Training Center, Glynco, GA  
-- Taught two hour long lectures on deaths involving fires, burns, and explosions to the prospective ATF (Alcohol, Tobacco and Firearms) special agents, 21 AUG 1992.

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PROFESSIONAL SOCIETIES:

1. Tidewater Pathology Society; president, July 1998 to April 2000
2. Association of Military Surgeons of the U.S.; member
3. College of American Pathologists -FELLOW
4. American Academy of Forensic Sciences - Member
5. Diplomat of American Board of Pathology

PUBLICATIONS:

1. "Primary Causes of Drowning and Near-drowning in SCUBA Divers", The Physician and Sportsmedicine Sept 1986.
2. "Treatment of Type I Decompression Sickness using U.S. Navy Algorithms" Undersea Biomedical Research, 1989, 16 (6).

PRESENTATIONS:

1. Case report: "Pituitary apoplexy and review of the literature." Presented at the 1995 annual meeting of the American Academy of Forensic Scientists, Seattle, WA, Feb. 1995
2. "Venous Air Embolism due to an Abdominal Gunshot Wound", Presented at the annual meeting of the American Academy of Forensic Scientists, San Antonio, Texas, Feb. 1994.
3. "Sudden Unexpected Death due to Cardiac Conduction System Abnormalities: A report of four cases." presented at the annual meeting of the American Academy of Forensic Scientists, San Antonio, Texas, Feb. 1994.
4. "Aircraft Control Injuries in Pilots and Copilots in Military Aircraft", presented at the annual meeting of the Aerospace Medical Association, May 1993, by a coauthor.

JIMMY W. GREEN

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UNITED STATES MARINE CORPS  
GENERAL COURT-MARTIAL  
SIERRA JUDICIAL CIRCUIT

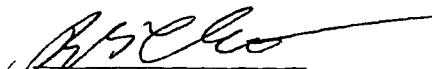
UNITED STATES	)	
	)	PROTECTIVE ORDER AGAINST
v.	)	PUBLICITY
	)	
GARY P. PITTMAN	)	
(b)(6)	)	8 July 2004
Sergeant	)	
U.S. Marine Corps	)	

This matter came for hearing pursuant to notice of a motion made jointly by defense and government. The court, having heard the requests and arguments of counsel on the motion; IT IS HEREBY ORDERED that:

1. No witness or person subpoenaed as a witness, no judicial officer, public employee, law enforcement officer, or attorney connected with this case, or their assistants, clerks, investigators, deputies, staff members, or employees under their supervision, make or authorize for public dissemination the making of extrajudicial statements concerning this case, and that no such persons shall release or authorize the release of any documents, exhibits, or other evidence connected with this case.
2. No person mentioned above make any statement for public dissemination concerning the existence or possible existence of any document, exhibit, or any other evidence connected with this case.
3. No such person express for public dissemination or make any comment concerning the weight or effect of any evidence as tending to establish guilt or innocence.

4. No such person make any statement for public dissemination concerning the identity of any prospective witness, or the witness' probable testimony, or the effect thereof.
5. No such person make any statement for public dissemination concerning the nature, source, or effect of any evidence obtained as a result of the investigation of this matter.
6. No such person make any statement for public dissemination as to the nature, source, or effect of any evidence introduced or testimony given in any proceeding related to this matter.
7. This order is to remain in effect until further order of the court.

Dated: 4 Jul 04

  
R. S. Chester  
Colonel, U.S. Marine Corps  
Military Judge

UNITED STATES MARINE CORPS  
GENERAL COURT-MARTIAL  
SIERRA JUDICIAL CIRCUIT

UNITED STATES

v.

GARY P. PITTMAN

(b)(6)

Sergeant

U.S. Marine Corps Reserve

**SYNOPOSIS OF EXPECTED  
TESTIMONY FOR INITIAL  
WITNESSES REQUESTED BY  
DEFENSE**

**8 July 2004**

1. Lieutenant Colonel (b)(6) USMCR, Second Battalion, Twenty-Fifth Marine Regiment. Ph# (212) 218-2100. It is expected that if called testify as a witness in this case Lieutenant Colonel (b)(6) will testify as to the general conditions at Camp Whitehorse, the detainee handling procedures that were utilized and condoned by the leadership of 2/25, and would testify that based on his experiences working with Sergeant Pittman over two separate periods when 2/25 was mobilized, that he believes Sergeant Pittman has excellent military character. Lieutenant Colonel (b)(6) will testify that as the Battalion XO at the time of the (b)(6) arrival, he was responsible for giving and receiving orders regarding how the (b)(6) was to be treated, and that he had contact with the Sheik's followers, and that the (b)(6) followers were very attentive to the (b)(6) well-being. He will testify that he received no complaints from any of the (b)(6) entourage or followers regarding the treatment of the (b)(6) during the time the (b)(6) was at Camp Whitehorse. He will also testify that the (b)(6) people were vocal in expressing concerns that the treatment of the (b)(6) as well as any other member of the group by the Marines. This is necessary and relevant for Sergeant Pittman to defend against the allegations made by Private First Class (b)(6) and Sergeant (b)(6) that the

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(b)(6) was beaten by Sergeant Pittman. Lieutenant Colonel Denlgar's testimony illustrates that he would have been informed if the (b)(6) had been mistreated. Since there were no complaints regarding the (b)(6) treatment by Marines, it casts doubt on Private First Class (b)(6) and Sergeant (b)(6) version of events inside Camp Whitehorse.

Lieutenant Colonel (b)(6) will also testify that the manner in which NCIS investigated the situation regarding (b)(6) death at Camp Whitehorse was unprofessional, and involved the use of unfair and sometimes unlawful coercion against his Marines. Testimony regarding the manner in which the NCIS investigation was conducted is an important facet of the defense case for Sergeant Pittman because many of the statements made by Marines to NCIS were made under duress, and as a result are not accurate. Lieutenant Colonel (b)(6) testimony not only corroborates the testimony of the Marines whose statements were inaccurate due to duress from NCIS, but details the severity of the actions taken by NCIS agents in their investigation for problems to be taken to a battalion executive officer.

Lieutenant Colonel (b)(6) will also testify about the training that was provided to 2/25 that dealt with the treatment of enemy prisoners of war while the battalion was at Camp Lejeune, prior to its deployment to Iraq. Lieutenant Colonel (b)(6) will testify that he was responsible for briefing the battalion on the battalion's SOP as it related to EPW's at that time and that he will testify about the fact that 2/25 was not provided with any training that related to running an EPW detention facility or detaining Iraqi criminals and street thugs. This testimony is necessary and relevant to the defense case because it goes to the heart of whether Sergeant Pittman had a duty, and knew that he had a duty,

with regard to the treatment of detainees at Camp Whitehorse, and if he had a duty, what that duty was.

c. Sergeant Rajendra Singh, USMC. Sergeant (b)(6) testimony is necessary and relevant as a result of his presence at Camp White Horse while the 15th MEU was running the facility. Sergeant (b)(6) will testify that he observed some turn over procedures and that he observed what training and in-briefs were provided to Sergeant Pittman prior to Sergeant Pittman starting to work at Camp White Horse. He will testify that there was a minimal amount of training given to guards at Camp Whitehorse prior to them being assigned as guards at Camp Whitehorse. He will testify that essentially the guards were provided no training on how to deal with Iraqis and that the guards were not given any non-lethal weapons such as batons or chemical agents that were provided to the MPs who were assigned to work at Camp Whitehorse while the 15<sup>th</sup> MEU ran the facility before 2/25 arrived. This testimony is necessary and relevant to the defense case because Sergeant (b)(6) was present at Camp Whitehorse before Sergeant Pittman, and can testify to the training that Sergeant Pittman was given as a Marine guard at a detention facility. Additionally, his testimony will go directly towards what duties Sergeant Pittman had as a guard, and how he knew of those duties. He will testify that some of the duties outline in the government's bill of particulars were not ever briefed to the guards. Sergeant (b)(6) was also the NCOIC of Camp Whitehorse while stationed at the camp. He will testify about his duties and responsibilities of the NCOIC of that Camp and that as NCOIC he had the most direct contact with NCOs such as Sergeant Pittman, and junior marines, such as Sergeant Pittman's shift subordinates

Sergeant (b)(6) will also testify that Sergeant Pittman has hit prisoners at Camp White Horse as a result of prisoners grabbing weapons from guards. He will testify that even when faced with situations that would justify the use of deadly force against a detainee, Sergeant Pittman employed only the minimum amount of force required to subdue an inmate. This testimony is necessary and relevant to refute the specification alleging Sergeant Pittman's assault of "unknown" Iraqi prisoners. It is also necessary and relevant to lay a foundation for Sergeant Pittman's character for peacefulness.

Sergeant (b)(6) will testify that he frequently observed Sergeant Pittman in the performance of his duties as a Camp Whitehorse guard. In addition, as the NCOIC of the guards Sergeant (b)(6) will testify about the duties Sergeant Pittman had as a guard on a daily basis, his ability to perform those duties, and the training and guidance that he, as the NCOIC directly in charge of guards, provided to Sergeant Pittman.

Sergeant (b)(6) will also testify about the effect that the admission of hardened and violent Iraqi criminals had on the guards. He will testify that the Marines were ~~unprepared to deal with this criminals, did not have any training on how to deal with the~~ criminals, and that the guards were essentially forced to make things up as they went along. Sergeant (b)(6) testimony in this regard is necessary and relevant because he is uniquely positioned as NCOIC of the guards to provide testimony about the manner in which detainees and guards interacted on a daily basis both before and after the admission of violent Iraqi criminals.

Sergeant (b)(6) will also that Sergeant Pittman implemented a variety of changes regarding the manner in which the initial procedures used to process Iraqi detainees into the detention facility were conducted. Specifically, he will testify that when the 15th

Marine Expeditionary Unit (MEU) turned over the facility to our battalion, they would search detainees while making them lie face down on cement, Sergeant Pittman did not believe that this was effective or appropriate, and changed the procedure for this searching to one where detainees would be placed against a wall and searched.

Sergeant (b)(6) will also testify that throughout the time that Sergeant Pittman worked as a guard at Camp Whitehorse, he never saw me use an inappropriate amount of force while in the execution of my duties as a guard.

Sergeant (b)(6) will also provide testimony about the guidance he received as NCOIC of the facility. He will testify that shortly after he arrived at Camp Whitehorse he was told by members of the Human Intelligence Exploitation Team (HET) that the guards were being too easy on detainees, and that he was given instructions by members of HET to keep the detainees awake and to make them uncomfortable until the HET arrived in order to make the detainees more likely to give the members of the HET team intelligence information.

The time periods of which that Sergeant (b)(6) can provide testimony are important to my case because the government has alleged that Sergeant Pittman was derelict in the performance of his duties from 1 April 20 30 June 2003.

d. Major Morant Pittman, USAR. Major Morant is an Army Reservist serving in support of Operation Iraqi Freedom. He is a Transportation Officer working for the U.S. Army III CORPS as an LNO at Shuaiba Port, Kuwait. Sergeant Pittman is Major Morant's second youngest brother. As such he grew up with Sergeant Pittman and has an extensive knowledge of Sergeant Pittman's entire career of service to the U.S. military. To include time that Sergeant Pittman has spent on active duty in the Marine Corps, time



in the Army reserves and national Major Morant Pittman will testify about Sergeant Pittman's character for truthfulness, his good military character, and his rehabilitative potential.

Major Morant Pittman will testify that he is one of Sergeant Pittman's (b)(6). (b)(6) He will testify that of Sergeant Pittman's (b)(6) he is the one to whom Sergeant Pittman is the closest. Major Pittman will testify that he grew up with Sergeant Pittman in a large family. In addition to Sergeant Pittman's (b)(6), he will testify about Sergeant Pittman's (b)(6). Major Pittman will testify that Sergeant Pittman wanted to emulate him and that Sergeant Pittman grew up with Major Morant from the time that Sergeant Pittman was born until Major Morant left for college when Sergeant Pittman was in high school.

Major Morant will testify that while Sergeant Pittman went to community college he had frequent contact with Sergeant Pittman. Major Morant will testify about how he would come to my college basketball games.

Major Pittman has will also testify about his personal knowledge of Sergeant Pittman's career in the Marine Corps and the Army. Major Morant was a Lieutenant in the U.S. Army when Sergeant Pittman graduated from bootcamp.

Major Pittman's testimony is necessary and relevant for Sergeant Pittman's defense because he will provide testimony about Sergeant Pittman's truthful character, his character for law-abidingness, and Sergeant Pittman's excellent military character. Major Morant's testimony will have a foundation that exceeds that of any other witnesses who can provide testimony about Sergeant Pittman's military character and character for truthfulness. Additionally, if it becomes necessary in sentencing, Major Pittman can

provide the most insightful testimony, and testimony that is most helpful to the jury, since Major Pittman, alone among defense witnesses, has known Sergeant Pittman for Sergeant Pittman's entire life.

e. Captain David Ashe, USMCR. (b)(6) Captain Ashe was the SJA for the 2/5 Governate Support Team during Operation Iraqi Freedom. Captain Ashe will testify that he was an eyewitness at the autopsy that was conducted on (b)(6). This autopsy was the basis for all of the physical evidence that exists regarding Mr. (b)(6) condition after he was deceased. He will testify that the initial conclusions of those present at the autopsy, to include NCIS agents and the doctor performing the autopsy, was that homicide would not be indicated as the cause of death. He will also testify that there was no evidence at the time of the autopsy to indicate that (b)(6) had died of other than natural causes. His testimony is necessary and relevant because the condition of (b)(6) body and the cause of death are all matters that the government intends to use to prove that Sergeant Pittman assaulted (b)(6). Captain Ashe's testimony will cast doubt on the manner in which the autopsy was conducted and the accuracy of the ultimate conclusions of the doctor performing the autopsy..

h. Major Clarke Paulus, USMC. I & I Staff, Second Battalion, Twenty-Fifth Marine Regiment. Major Paulus was the Officer in Charge of the Camp Whitehorse detention facility during the time that Sergeant Pittman was a guard assigned to that facility. Major Paulus will testify that he was present during the time that (b)(6) was in-processed, and he was also present during the time that the (b)(6) was present at the Camp Whitehorse detention facility. Major Paulus will testify that Sergeant Pittman used the appropriate amount of force necessary during the time period that (b)(6) an

alleged victim of Sergeant Pittman's assault and dereliction, was present at Camp White Horse. Major Paulus will also testify that he was present at Camp Whitehorse when the (b)(6) another alleged victim of Sergeant Pittman's assault and dereliction, was present at Camp Whitehorse. He will testify about the actions that Sergeant Pittman undertook as the (b)(6) followers were coming towards Camp Whitehorse in order to prepare the Camp to "stand-to." He will also testify that the (b)(6) was not mistreated while he stayed at Camp Whitehorse. Major Paulus' interactions with the (b)(6) are important because they will directly refute the testimony regarding my allegedly inappropriate use of force with regard to the (b)(6). Major Paulus' testimony regarding these matters is necessary and relevant because he was present at Camp Whitehorse during the time period that the (b)(6) was detained and will be able to testify about the (b)(6) physical appearance and his face-to-face interactions with the (b)(6) during this time period.

Major Paulus will also testify that he was the officer in charge (OIC) of the Camp Whitehorse detention facility during the time that (b)(6) was admitted as a detainee. That he was present during the time that (b)(6) was brought into Camp Whitehorse he will testify about his observations as the OIC, and that Sergeant Pittman properly conducted the off-loading of detainees and the in-processing of detainees at this time. This testimony is necessary and relevant because it shows that Sergeant Pittman was not derelict in the performance of his duties as they relate to (b)(6), as he is charged by the government. Additionally, it is necessary and relevant because it shows that Sergeant Pittman was not assaulting unknown Iraqi prisoners at this time, as is also alleged by the government. As the OIC on that date his understanding of my duties as a guard at Camp Whitehorse and his opinion of my conduct is extremely important for me

to rebut the charges that I was derelict in the performance of my duties at this time and with regard to (b)(6)

i. Major (b)(6) USMCR, Second Battalion, Twenty-Fifth Marines. Major (b)(6) was the commandant of Camp White Horse in Iraq. Part of his duties as commandant of Camp White Horse was oversight of the camp. In addition, Major (b)(6) will testify about the physical condition of (b)(6) 5 June 2003 when he visited the camp. He will testify that (b)(6) appeared to be in fine physical condition, that he was simply being defiant, and that he was physically throwing himself into concertina wire on purpose in order to make the guards lives very difficult. This is necessary and relevant to demonstrate that the kicks the government alleges Sergeant Pittman making to (b)(6) never happened, or in the alternative, if they did happen, they were so mild as to have no effect on (b)(6) physical well-being.

Major (b)(6) will also testify that the manner in which the guards removed detainees from HMMVWs and moved them through the detainees in-processing at Camp Whitehorse was deliberately done with speed in order to maintain the safety of the Marines and the Camp, and that the Marines were instructed to move quickly during this time. This is necessary and relevant because the government is alleging that Sergeant Pittman's manner in removing Iraqi detainees from HMMVWs was overly rough, and constituted assault and a dereliction of his duties. Major (b)(6) testimony will refute that argument by the government.

Finally, Major (b)(6) will testify that Sergeant Pittman's actions as the Marine often in charge of indoctrination for new Iraqi detainees was in line with his guidance as

commandant and was not overly rough or something that would constitute a dereliction of duty.

  
W. A. FOLK & J. TRANBERG

APPELLATE EXHIBIT ~~XXXX~~

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UNITED STATES MARINE CORPS  
GENERAL COURT-MARTIAL  
SIERRA JUDICIAL CIRCUIT

UNITED STATES

v.

GARY P. PITTMAN

(b)(6)

Sergeant

U.S. Marine Corps

MOTION  
FOR APPROPRIATE RELIEF

Compel Discovery

8 July 2004

1. **Nature of the Motion:** Pursuant to Rules For Courts-Martial 701(g)(3)(D), 905(b)(4) and 906(b)(7) the defense moves this court to order the government to order the following discovery requested by the defense be produced. Specifically, the defense requests the court compel the government to provide the defense with the materials requested in paragraph 2, *infra*.
2. **Summary of Facts:** Defense counsel served the government with the sixth defense discovery request on 23 June 2004. This discovery request has been marked as Appellate exhibit thirty-three (AE XXXIII). Pursuant to this discovery request, and the government's subsequent refusal to produce, the defense requests that the court order the production of all paperwork related to Sergeant (b)(6) request to be discharged from the Marine Corps as a conscientious objector. The defense team learned of Sergeant (b)(6) request to be declared a conscientious objector through an NCIS Interview and Interrogation Log dated 13 June 03. (Enclosure, Interview/Interrogation Log). When a Marine requests to be separated from the Marine Corps as a conscientious objector there are a number of steps that the Marine must take in order to effect that desire. Marine Corps Order 1306.16E (hereinafter, "MCO 1306.16E") outlines the Marine Corps policy on conscientious objectors. (Enclosure, MCO 1306.16E). Marines who

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conscientiously object to serving in the Marine Corps may seek separation from the service or assignment to noncombatant duties. (Enclosure, par. 6, page 4). In order to be considered for processing as a conscientious objector, a Marine must submit an application requesting that action. (Enclosure, par. 6, page 4). As part of the application for conscientious objector status, the following things must take place: (1) an interview between a chaplain and the applicant; (2) a written opinion from the chaplain regarding the nature and basis of the applicant's claim and the applicant's sincerity and depth of conviction (Enclosure, Par. 6(c)); (3) an interview by a clinical psychologist or psychiatrist regarding whether the applicant has a psychiatric disorder that would warrant treatment or disposition through medical channels *See id*; (4) an investigating officer in the grade of captain or higher, will be appointed by the commander exercising Special Court-Martial jurisdiction over the applicant, to investigate the applicant's claim (Enclosure, Par 6(d), page 5); (5) a hearing will be conducted regarding the conscientious objector request and an investigative report shall be prepared (Enclosure, Par. 6(e), page 5). The applicant will have the opportunity to present a rebuttal to this report. (6) The investigative officer's report will be sent to the commander who appointed the investigating officer (Enclosure, Par 6(f), page 5). The appointing officer will make a recommendation as to disposition, and will forward those comments up the chain of command, for the inclusion of additional comments, all the way to the Commandant of the Marine Corps for final determination. *See id*. Enclosure 2 to MCO 1306.16E lists all of the information that an applicant requesting conscientious objector status must provide. One of the items that must be discussed in the application for conscientious objector status is listed in Paragraph 2(B)(4) (Page 2, Enclosure (2), MCO 1306.16E). This requires the applicant to provide an explanation, "as to the circumstances, if any, under which the applicant's believes in the use of force, and to what extent, under any foreseeable

circumstances.” The defense believes that this is important to be able to impeach Sergeant (b)(6) testimony regarding the types of force that he saw Marines use at Camp Whitehorse and why he believes that this application of force was a violation of the Geneva Convention.

In its fifth discovery request the defense requested the production of (b)(6) service record book. The government has indicated that it will provide the defense with a copy of Sergeant (b)(6) service record book, (hereinafter, “SRB”) however, to date a copy has not been provided to the defense. The defense believes that Sergeant (b)(6) SRB and his application for classification as a conscientious objector is necessary and relevant for the purpose of exploring Sergeant (b)(6) opinions as a witness regarding the appropriate use of force and the Geneva Conventions. Sergeant (b)(6) said that he saw Sergeant Pittman strike two detainees (P30, (b)(6) transcript, Appellate Exhibit XXV). Sergeant (b)(6) also testified that he saw Sergeant Pittman strike a (b)(6) transcript, Appellate Exhibit XXV). Sergeant (b)(6) also testified that he holds the belief that the manner in which Marines conducted the in-processing of detainees was a violation of the Geneva Conventions.

In addition to the materials requested that pertain to (b)(6) the defense has requested a number of items that are necessary and relevant to understand and prepare for the expected testimony of Mr. Solis, the government’s operational law expert or assistant, and to determine whether the defense needs to request its own operational law expert. The items that the defense desires are detailed in paragraph 1(a)-(m) of defense discovery request VII (Enclosure, Defense Discovery Request VII).

Finally, the defense has requested, and the government appears to intend to produce, items listed in paragraph 2(a)-(g) of Defense Discovery Request VII. At this time, the defense simply would like the court to be aware of the defense desire for these items.

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3. Discussion:

a. R.C.M. 703(a) establishes the standard for discovery in military courts: the prosecution and defense "shall have equal opportunity to obtain witnesses and evidence." See also, U.C.M.J. Art. 46. To ensure that R.C.M. 703 will have meaning at trial, "[e]ach party shall have adequate opportunity to prepare its case and equal opportunity to interview witnesses and inspect evidence." R.C.M. 701(e). The accused is entitled to inspect both exculpatory and inculpatory evidence. Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963); United States v. Kern, 22 M.J. 49, 51 (C.M.A. 1986).

b. Military courts recognize a more direct and generally broader means of discovery by an accused than what is normally available in civilian courts. U.S. v. Dancy, 38 M.J. 1, 5 (C.M.A. 1993); U.S. v. Reece, 25 M.J. 93, 94 (C.M.A. 1987). Regarding discovery, "military law has been preeminent, jealously guaranteeing to the accused the right to be effectively represented by counsel through affording every opportunity to prepare his case by openly disclosing the Government's evidence." U.S. v. Enloe, 15 U.S.C.M.A. 256, 35 C.M.R. 228, 230 (C.M.A. 1965). The only restrictions placed upon liberal defense discovery are that the information requested must be relevant and necessary to the subject of the inquiry, and the request must be reasonable. Reece, 25 M.J. at 95.

The trial counsel has the duty not only to disclose evidence, but also an affirmative duty to search for evidence. See Brady v. Maryland, 373 U.S. 83 (1963) (suppression of evidence favorable to an accused violates due process where the evidence is material either to guilt or punishment). Compliance with the requirements set forth in Brady require more from a prosecutor than remaining unaware of evidence and "chanting 'open file discovery.'" 1999 ARMY LAW. 37, 40, citing Carey v. Duckworth, 738 F.2d 875 (7<sup>th</sup> Cir.1994); U.S. v. Simmons,

38 M.J. 376 (C.M.A. 1993). In fact, the government has the duty to exercise due diligence in reviewing not only the evidence in possession of the trial counsel but also that in the possession, control, or custody of other government authorities, to determine if discoverable information exists. U.S. v. Williams, 50 M.J. 436, 441 (1999); Simmons, 38 M.J. at 381. This duty to go beyond the evidence in the prosecution's control extends to three types of files: (1) files of law enforcement authorities that have participated in investigations of the subject-matter of the charged offenses; (2) investigative files in a related case maintained by an entity closely aligned with the prosecution; (3) other files, as designated in a defense discovery request, that involve specified types of information within the specified entity. Williams, 50 M.J. at 441.

c. According to the Court of Military Appeals, the Military Rules of Evidence establish "a low threshold of relevance." Id. at 95. Relevant evidence is "any 'evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.'" Id. at 95, *quoting* M.R.E. 401.

d. Material evidence is that which bears more than "some abstract logical relationship to the issues in the case." U.S. v. Branoff, 34 M.J. 612, 621 (A.F.C.M.R. 1992), *quoting* U.S. v. Ross, 511 F.2d 757, 763 (5th Cir. 1975), *cert. denied*, 423 U.S. 836, 96 S.Ct. 62, 46 L.Ed.2d 54 (1975). Materiality requires "some indication that the pretrial disclosure of the disputed evidence would have enabled the defendant significantly to alter the quantum of proof in his favor." Branoff at 621, *quoting* Ross at 763.


e. The government's failure to disclose evidence that is favorable to a defendant violates the due process rights of that individual if the evidence is material to guilt or punishment. Brady, 373 U.S. at 83, 86. Favorable evidence includes exculpatory evidence and information that might be used to impeach government witnesses. Strickler v. Greene, 119 S.Ct. 1936 (1999);


Kyles v. Whitley, 514 U.S. 419 (1995); United States v. Bagley, 473, U.S. 667 (1985); Giglio v. United States, 405 U.S. 150 (1972).

f. The defense submits that the information requested is relevant and necessary, and that under the circumstances the requests are reasonable. Sergeant (b)(6) is one of the government's main witnesses against Sergeant Pittman. The contents of Sergeant (b)(6) processing as a conscientious objector clearly may contain information that is necessary and relevant in order to determine numerous important factors. This includes but is not limited to determining whether Sergeant (b)(6) has a religious or moral basis for believing that *any* use of force by Marines against enemies is immoral. If so, he may have a bias against the use of force and any Marines using that force. Such a bias is admissible in a court-martial through the introduction of extrinsic evidence and examination of the witness under M.R.E. 608(c). Sergeant (b)(6) deposition testimony indicated that he had a problem with the use of force by Marines at Camp Whitehorse, and that he believed, based on his training at boot camp, that it violated the Geneva Convention. A Marine seeking conscientious objector status, "bears the initial responsibility of presenting evidence which demonstrates a sincere opposition to war in any form based upon religious training and belief." (Enclosure, MCO 1306.16E, par. 4, page1). If Sergeant (b)(6) has or had a sincere opposition to war in any form, that is another important factor affecting Sergeant (b)(6) possible bias against Marines conducting operations during war and an area that the defense is allowed to fully explore. Additionally, it is important for the defense to understand what the outcome Sergeant (b)(6) request for processing as a conscientious objector was. The information requested is necessary to allow the defense to properly cross-examine government witnesses and to allow the finder of fact, both for

purposes of pre-trial motions and trial, to properly judge the credibility of the government's most important witnesses.

4. **Relief Requested:** Pursuant to R.C.M. 701(g) (3) (D), the defense respectfully requests the court to order the government to produce the requested discovery.
5. **Evidence:** The defense will present documentary evidence in support of this motion.
6. **Oral Argument:** The defense requests oral argument on this motion.

  
J. TRANBERG  
Civilian Defense Counsel

  
W. A. FOLK  
Detailed Defense Counsel

\*\*\*\*\*

Certificate of Service

I certify that a true copy of this motion was served on opposing counsel on this 8th day of July, 2004.

  
W. A. FOLK



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
WASHINGTON, DC 20380

MCO 1306.16E  
MPP-39/3  
21 Nov 1986

MARINE CORPS ORDER 1306.16E

From: Commandant of the Marine Corps  
To: Distribution List

Subj: Conscientious Objectors

Ref: (a) MCO 1900.16C  
(b) 38 U.S.C. Section 3103

Encl: (1) Definitions  
(2) Required Information to be Supplied by Applicants  
for Discharge or Noncombatant Service  
(3) Summary Sheet for Review of Conscientious  
Objector Application  
(4) Privacy Act Statement  
(5) Counseling Concerning Veterans Administration  
Benefits  
(6) Sample Appointing Order  
(7) Guide to the Investigating Officer  
(8) Sample Investigating Officer's Report  
(9) Counseling Concerning Designation as a  
Conscientious Objector  
(10) Selective Service Procedures

1. Purpose. To provide current policy and procedures  
concerning conscientious objection applicable to all Marines.

2. Cancellation. MCO 1306.16D.

3. Definitions. Definitions of specific terms used in this  
Order are from the references and are found in enclosure (1).

4. Policy

a. Conscientious objection does not exempt a Marine from  
active military service. However, to preclude a conflict  
between the needs of the service and the necessity to respect  
an individual's religious training and beliefs, no person with  
beliefs or convictions which would interfere with unrestricted  
assignments, regardless of Selective Service System  
classification, will be accessed into the Marine Corps.

b. The person seeking conscientious objector status bears  
the initial responsibility of presenting evidence which  
demonstrates a sincere opposition to war in any form based upon  
religious training and belief. Once this responsibility is  
met, conscientious objector status will be granted unless the  
Government can establish a rational basis in fact for denying  
the application. The claimant must request either separation

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based on conscientious objection (1-0) or assignment to noncombatant training and service based on conscientious objection (1-A-0).

c. A Marine who possesses qualifying beliefs which became fixed or crystallized before entering military service is not eligible for conscientious objector status. The Government bears the responsibility of demonstrating this disqualification.

d. The administrative discharge of Marines prior to completion of an obligated term of service is at the discretion of the Commandant of the Marine Corps (CMC) based on the facts and circumstances of each case. If possible, after classification as a conscientious objector, a request for relief from, or restriction of, military duties will be approved.

e. Because of the personal and subjective nature of conscientious objection, the existence, honesty, and sincerity of asserted conscientious objector beliefs are difficult to determine using any set of rigid standards. Requests for discharge or assignment to noncombatant duties based on conscientious objection will, therefore, be handled on an individual basis with the final determination made per the facts and circumstances in the particular case and the policy and procedures set forth in this Order.

#### 5. Criteria

a. The criteria set forth in this Order provide guidance in considering applications for separation or for assignment to noncombatant duties based on conscientious objection.

b. Consistent with the policy contained in the references and this Order, an application for classification as a conscientious objector may be approved for any individual:

(1) Who is conscientiously opposed to participation in war in any form;

(2) where opposition is founded on religious training and belief; and

(3) whose position is sincere and deeply held.

#### c. Religious Training and Belief

(1) The applicant may express the belief that forms the basis for the application on religious, moral, or ethical grounds. However expressed, this belief must be the primary controlling force in the applicant's life and must be of the same strength and depth as found in traditional religious convictions.

(2) The applicant must show that expediency or the avoidance of military service is not the basis of the claim. A primary factor is the sincerity with which the belief is held.

Great care is needed in seeking to determine whether the asserted beliefs are honestly and genuinely held. Impartial evaluation of the applicant's thoughts and actions, both past and present, will help determine the sincerity of the claim. The applicant's actions in all aspects of life should be consistent with the stated beliefs.

(a) Therefore, in evaluating an application, the conduct of the applicant, in particular the outward manifestation of the beliefs asserted, will be carefully examined and given substantial weight.

(b) Relevant factors considered in determining an applicant's claim of conscientious objection include: training in the home and church; general demeanor and pattern of conduct; participation in religious activities; whether ethical or moral convictions were gained through training, study, contemplation, or other activity comparable in rigor and dedication to the processes by which traditional religious convictions are formulated; credibility of the applicant; and credibility of persons supporting the claimant.

(3) Particular care must be exercised by individuals processing applications not to deny the existence of bona fide beliefs that are incompatible with their own.

(a) Church membership or adherence to particular theological tenets is not required to warrant separation or assignment to noncombatant training and service for conscientious objectors.

(b) Mere affiliation with a church or other group which advocates conscientious objection as a tenet of its creed is not necessarily determinative of an applicant's position or belief.

(c) Conversely, affiliation with a church or group which does not teach conscientious objection does not necessarily rule out adherence to conscientious objection beliefs in any given case.

(d) Where an applicant is or has been a member of a church, religious organization, or religious sect, and where the claim of conscientious objection is related to such membership, inquiry may properly be made as to the fact of membership, and the teaching of the church, religious organization, or religious sect, as well as the applicant's religious activity. However, the fact that the applicant may disagree with, or not subscribe to, some of the tenets of the church does not necessarily discredit the claim. The personal convictions of an individual will be controlling as long as they derive from the individual's moral, ethical, or religious beliefs.

(e) Moreover, an applicant who is otherwise eligible for conscientious objector status may not be denied that status simply because the conscientious objection influences the views concerning the nation's domestic or foreign policies. The task is to decide whether the beliefs professed

are sincerely held and whether they govern the claimant's actions both in word and deed. A recommendation for denial of a claimant's application should be made when it can be determined that the sole basis for the claim rests upon political rather than religious, moral, or ethical beliefs.

d. An applicant claiming 1-0 status should not be granted 1-A-0 status as a compromise. This does not prohibit the granting of 1-A-0 status when the record makes it clear that such a status is appropriate, notwithstanding the Marine's initial application.

e. The provisions of the Order will not be used to effect the administrative separation of a Marine who does not qualify as a conscientious objector or in lieu of other administrative separation procedures set forth in reference (a). A Marine determined not qualified for conscientious objector status, but whose separation would otherwise appear to be in the best interest of the Marine Corps, should be considered applicable for administrative separation under the provisions of reference (a). If a negative recommendation to the claimant's application for conscientious objector status is rendered, forwarding endorsements should not contain statements concerning the type of discharge the applicant desires or the previous nature of service.

6. Procedures

a. Marines seeking separation or assignment to noncombatant duties because of conscientious objection will submit an application requesting such action. The application will state whether they are seeking a discharge or assignment to noncombatant duties and will include the following items:

(1) The personal information required by enclosures (2) and (3) of this Order. Before providing this information, the Marine will be advised of the Privacy Act, and will read and sign enclosure (4) of this Order.

(2) Any other items which the Marine desires to submit in support of the case.

b. Before processing the application, the Marine will be advised of the provisions of reference (b) concerning Veterans Administration (VA) benefits and will be required to sign the statement appearing in enclosure (5) (VA benefits) of this Order.

c. The applicant shall be personally interviewed by a chaplain who shall submit a written opinion as to; (1) the nature and basis of the applicant's claim, and (2) the applicant's sincerity and depth of conviction. The chaplain's report shall include specific reasons for the conclusions. In addition, the applicant will be interviewed by a clinical psychologist or psychiatrist (or a physician if neither of the preceding is reasonably available) who shall submit a written report of psychiatric evaluation indicating the presence or



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absence of any psychiatric disorder which would warrant treatment or disposition through medical channels, or such personality disorder as to warrant recommendation for appropriate administrative action. These reports will become part of the application. If the applicant refuses to participate or is uncooperative or unresponsive in the course of the interviews, this fact will be included in the statement and report filed by the chaplain and clinical psychologist or psychiatrist (or physician).

d. The commander exercising Special Court-Martial jurisdiction over the applicant will appoint an officer in the grade of captain or higher, knowledgeable in the policies and procedures relating to conscientious objector matters, to investigate the applicant's claim. The investigating officer will not be an individual in the chain of command of the applicant. If the applicant is a commissioned officer, the investigating officer will be senior in both temporary and permanent grades to the applicant. Enclosure (6) is a sample Appointing Order.

e. The investigating officer will conduct the investigation, hold a hearing on the application, and prepare the investigative report. This report, along with the individual's application, administrative documents, the chaplain's and doctor's reports, and any other items submitted by the applicant will constitute the record of the case. The investigating officer's recommendation will be based on the entire record and not merely on the evidence produced at the hearing. A copy of the investigating officer's report will be provided to the applicant when the record is forwarded to the commander who appointed the investigating officer. The applicant will be informed of the right to submit a rebuttal to the report within 7 days. The first forwarding endorsement will include a statement from the applicant acknowledging receipt of a copy of the investigating officer's report and will contain either a rebuttal to the report or a statement that no rebuttal will be submitted. Enclosure (7) is a guide to the investigating officer, and enclosure (8) is a sample Investigating Officer's Report.

f. The record of the case will be forwarded to the commander who appointed the investigating officer. It will be reviewed for completeness and legal sufficiency. If necessary, the case may be returned to the investigating officer for further action. When the record is complete, the commander will send it, with personal recommendation for disposition and supporting rationale, via the chain of command to the CMC (MM) for final determination. Each officer in the chain of command will provide specific recommendation.

g. The commanding general or commanding officer providing the final endorsement and recommendation will refer a copy of all material to be forwarded to the CMC (MM) to the applicant. The applicant will be informed of the right to submit a rebuttal to the additional material within 7 days. On receipt of the applicant's statement or expiration of the 7-day period, the

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package will be endorsed either "Forwarded" or "Forwarded, no comments have been received" as appropriate.

h. A final decision based on the entire record will be made by the CMC (MM). Any additional information, other than the record of the case with endorsements, and the official service record of the applicant, which is adverse to the applicant, will be made part of the record, and the applicant will be given an opportunity to refute or comment on the material before a final decision is reached. The reason for an adverse decision will be made a part of the record and will be provided to the individual.

i. Processing of applications need not be stopped by the unauthorized absence of the applicant, by the institution of disciplinary action, or by administrative separation proceedings against the applicant. An applicant whose request for classification as a conscientious objector has been approved will not be discharged until disciplinary action has been resolved.

j. Until a final decision is made by the CMC (MM) every reasonable effort will be made to assign applicants to duties within the command which conflict as little as possible with their asserted beliefs. Applicants will conform to the normal requirements of the command and perform satisfactorily such duties as they may be assigned. Applicants may be disciplined for violations of the Uniform Code of Military Justice (UCMJ) while awaiting action on their applications.

k. A Marine reservist who applies for conscientious objector status will not normally be ordered to involuntary active duty until the application is resolved. Proper resolution of the application is best accomplished within the Reserve unit. During the period of application the provisions of paragraph 7j above apply. If a reservist applies for conscientious objector status after notification of the commanding officer's intent to recommend involuntary active duty, and in the commanding officer's best judgment the application is without merit and simply a means to avoid involuntary active duty, the commanding officer may recommend to the CMC (RES) that the application be held in abeyance, and the Marine ordered to active duty. When the Marine reports as ordered, the application may be renewed and processed under this Order.

#### 7. Classification

a. 1-0. An applicant requesting discharge, who is determined to be a 1-0 conscientious objector by the CMC (MM), will be discharged "For the Convenience of the Government" with an entry in the service record and on the discharge document reflecting the reason for separation as conscientious objection. The type discharge issued will be based on the applicant's service record, and the provisions of reference (b). Pending separation, the applicant will continue to be assigned duties that provide the minimum practical conflict with the professed beliefs. The applicant will conform to the

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normal requirements of the command and perform satisfactorily those duties assigned. An applicant may be discharged for violations of the UCMJ while awaiting discharge per this Order, in addition to any other disciplinary measures deemed appropriate. An applicant who is awarded a punitive discharge or who is properly processed for another type of administrative discharge, while awaiting final action on a conscientious objector application, will be given the punitive or other administrative discharge as appropriate.

b. 1-A-0

(1) Applicants requesting assignment to noncombatant duties who are determined to be class 1-A-0 conscientious objectors will be reassigned to appropriate duties, as indicated below, or discharged at the discretion of the CMC. Applicants will execute the statement contained in enclosure (9) of this Order.

(2) Class 1-A-0 conscientious objectors, if retained in the service, will not be assigned to combat or combat support occupational fields. Instead, they will be assigned to appropriate duties, via on-the-job training, within the combat service support occupational fields.

(3) After receiving the appropriate military occupational speciality (MOS), conscientious objectors will be used in that MOS or in other duties consistent with the definition of noncombatant duties provided in this Order. Determination of these duties is the responsibility of the command to which the conscientious objector is assigned. Nothing in this Order precludes the assignment of conscientious objectors to Fleet Marine Force units, overseas, or in combat areas.

(4) The disposition of Marine officers classified as conscientious objectors will be determined by the CMC (MM).

c. Marines assigned noncombatant duties and those assigned normal duties, by reason of the disapproval of their application, will conform to the normal requirements of their command and perform assigned duties satisfactorily. Violations of the UCMJ by these members will be treated as in any other situation.

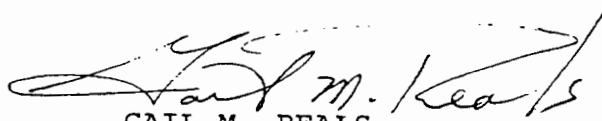
8. Selective Service System. Enclosure (10) contains procedures for processing application for conscientious objector status in cases involving the Selective Service System.

9. Promotion. Promotion of a conscientious objector is permitted provided the Marine is otherwise qualified. A Marine's status as a conscientious objector, in itself, will not affect promotion nor will special provisions in existing promotion procedures be established.

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10. Leave. An applicant who has requested conscientious objector status, either 1-0 or 1-A-0, is not eligible for appellate leave pending resolution of the application. Annual leave may be granted per applicable directives.

11. Reserve Applicability. This Order is applicable to the Marine Corps Reserve.

  
GAIL M. REALS  
By direction

DISTRIBUTION: A

Copy to: 8145001  
7000027 (20)

DEFINITIONS

1. Conscientious Objection. A firm, fixed, and sincere objection to participation in war in any form or the bearing of arms, by reason of religious, moral or ethical training, and belief.
2. Conscientious Objector
  - a. Class 1-0 Conscientious Objector. A member who, by reason of conscientious objection, sincerely objects to participation of any kind in war in any form.
  - b. Class 1-A-0 Conscientious Objector. A member who, by reason of conscientious objection, sincerely objects to participation as a combatant in war in any form, but whose convictions are such as to permit military service in a noncombatant status.
3. Religious Training and Belief. Belief in an external power or being or deeply held moral or ethical belief, to which all else is subordinate or upon which all else is ultimately dependent, and which has the power or force to affect moral well-being. The external power or being need not be of an orthodox deity, but may be a sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by the God of another, or, in the case of deeply held moral or ethical beliefs, a belief held with the strength and devotion of traditional religious conviction. The term "religious training and belief" may include solely moral or ethical beliefs even though the applicant may not characterize these beliefs as "religious" in the traditional sense, or may expressly characterize them as not religious. The term "religious training and belief" does not include a belief which rests solely upon considerations of policy, pragmatism, expediency, or political views.
4. War in Any Form. The term "war in any form" will be interpreted in the following manner:
  - a. Individuals who desire to choose the war in which they will participate are not conscientious objectors under the law. Their objection must be to all wars rather than a specific war;
  - b. A belief in a theocratic or spiritual war between the powers of good and evil does not constitute a willingness to participate in "war" within the meaning of this Order;
  - c. A willingness to use force to protect one's self, home, or family is not considered inconsistent with a conscientious objection to participation in wars.
5. Noncombatant Service or Noncombatant Duties
  - a. Any other assignment, the primary function of which does not require the use of arms in combat, provided that such other assignment is acceptable to the individual concerned and

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does not require that individual to bear arms or to be trained in their use.

b. Service aboard an armed ship or aircraft or in a combat zone shall not be considered to be combatant duty unless the individual concerned is personally and directly involved in the operation of weapons.

6. Noncombatant Training. Any training which is not concerned with the study, use, or handling of arms or weapons.

ENCLOSURE (1)

2

APPELLATE EXHIBIT

XLI

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REQUIRED INFORMATION TO BE SUPPLIED BY APPLICANTS  
FOR DISCHARGE OR NONCOMBATANT SERVICE

Each person seeking release from active service from the Marine Corps, or assignment to noncombatant duties, as a conscientious objector, will provide the following information in the format as shown below. The individual may submit such other information as desired.

A. General Information Concerning Applicant.

1. Full name
2. Social security number
3. Selective service number (if applicable)
4. Service address
5. Permanent home address
6. Name and address of each school and college attended (after age 16) together with the dates of attendance and the type of school (public, church, military, commercial, etc.).
7. A chronological list of all occupations, positions, jobs, or types of work, other than as a student in school or college (after age 16), whether for monetary compensation or not. Include the type of work, name of employer, address of employer, and the from/to date for each position or job held.
8. All former addresses (after age 16) and dates of residence at those addresses.
9. ~~Parent's names and address. Indicate whether they are living or deceased.~~
10. The religious denomination or sect of both parents.
11. Was application made to the Selective Service System (local board) for classification as conscientious objector prior to entry into the Marine Corps? To which local board? What decision was made by the board, if known? If application was not made, explain why not.
12. When the applicant has served less than 180 days in the military service, a statement by the applicant as to whether the applicant is willing to perform work under the Selective Service System civilian work program for conscientious objector. Also a statement of the applicant as to whether

ENCLOSURE (2)

the applicant consents to the issuance of an order for such work by the applicant's local Selective Service Board.

B. Training and Belief

1. A description of the nature of the belief which requires the applicant to seek separation from the Marine Corps or assignment to noncombatant training and duty for reasons of conscience.
2. An explanation as to how the applicant's beliefs changed or developed, to include an explanation as to what factors (how, when, and from whom or from what source training received and belief acquired) caused the change in or development of conscientious objection beliefs.
3. An explanation as to when these beliefs became incompatible with military service, and why.
4. An explanation as to the circumstances, if any, under which the applicant believes in the use of force, and to what extent, under any foreseeable circumstances.
5. An explanation as to how the applicant's daily life style has changed as a result of the applicant's beliefs, and what future actions are planned to continue to support these beliefs.
6. An explanation as to what in the applicant's opinion most conspicuously demonstrates the consistency and depth of beliefs which gave rise to the claim.

---

C. Participation in Organizations

1. Information as to whether applicant has ever been a member of any military organization or establishment before entering upon the present term of service. If so, the name and address of such organization will be given together with reasons why the applicant became a member.
2. A statement as to whether applicant is a member of a religious sect or organization. If so, the statement will show the following:
  - a. The name of the sect, and the name and location of its governing body or head, if known.
  - b. When, where, and how the applicant became a member of said sect or organization.

ENCLOSURE (2)



- c. The name and location of any church, congregation, or meeting which the applicant customarily attends, and the extent of the applicant's active participation therein.
  - d. The name, title, and present address of the pastor or leader of such church, congregation, or meeting.
  - e. A description of the creed or official statements, if any, and if they are known to the applicant, of said religious sect or organization in relation to participation in war.
3. A description of applicant's relationship with and activities in all organizations with which the applicant is or has been affiliated, other than military, political, or labor organizations.

D. References

Any additional information; e.g., letters, references, official statements, or organizations to which the applicant belongs or refers in the application, that the applicant desires to be considered by the authority reviewing the application. The burden is on the applicant to obtain and forward such information.

ENCLOSURE (2)

SUMMARY SHEET FOR REVIEW OF CONSCIENTIOUS OBJECTOR APPLICATION

1. Date of Application \_\_\_\_\_ 2. Unit \_\_\_\_\_ Date \_\_\_\_\_

3. Name and Grade \_\_\_\_\_ 4. SSN/MOS \_\_\_\_\_ 5. Date of Birth \_\_\_\_\_

6. Marital Status \_\_\_\_\_ 7. Selective Service System No. \_\_\_\_\_  
M \_\_\_\_\_ S \_\_\_\_\_

8. Applicant Requests 1-0 Discharge \_\_\_\_\_

9. Willing to perform alternate civilian service  
Yes \_\_\_\_\_ No \_\_\_\_\_

10. Civilian Occupation \_\_\_\_\_ 11. PEBD \_\_\_\_\_ 12. Entered Service on \_\_\_\_\_  
By enl \_\_\_\_\_  
Induction \_\_\_\_\_  
Other \_\_\_\_\_  
Years \_\_\_\_\_

13. Date entered \_\_\_\_\_ 14. Months of \_\_\_\_\_ 15. EAS \_\_\_\_\_  
active duty \_\_\_\_\_ active duty \_\_\_\_\_

16. Decorations, Commendations \_\_\_\_\_

17. Applicant's Religion \_\_\_\_\_

WITNESS' SIGNATURE \_\_\_\_\_

APPLICANT'S SIGNATURE \_\_\_\_\_

DATE \_\_\_\_\_

ENCLOSURE (3)

PRIVACY ACT STATEMENT

---

DATA REQUIRED BY THE PRIVACY ACT OF 1974  
(5 U.S.C. Section 552a)

---

PART A - GENERAL

---

1. Requiring Document: MCO 1306.16E
2. HQMC Sponsor Code: MPP-39
3. Descriptive Title: Conscientious Objector Information

---

PART B - INFORMATION TO BE FURNISHED TO INDIVIDUAL

---

1. Authority:  
50 U.S.C. Appx section 456(j)  
Executive Order 9397, 22Nov43 (Social Security Number)
2. Principal Purpose: Used by officials within the Marine Corps to determine whether conscientious objector status is appropriate.
3. Routine Use: The information collected will be used by appropriate authority to grant or deny the requested conscientious objector status.
4. Mandatory or Voluntary Disclosure and Affect on Individual Not Providing Information:  
Disclosure of information is voluntary. If information is not furnished, applicant may not receive the sought for status.

---

PART C - STATEMENT OF UNDERSTANDING

---

I have read and understand this statement. I understand that I will have the opportunity to review the completed investigation before it is submitted to the convening authority.

Date

Signature

SSN

COUNSELING CONCERNING  
VETERANS ADMINISTRATION BENEFITS

I have been advised of the provisions of 38 U.S.C. Section 3103 concerning possible nonentitlement to benefits administered by the Veterans Administration due to discharge from the military service as a conscientious objector under certain conditions. I understand that a discharge as a conscientious objector, who refuses to perform military duty or otherwise to comply with lawful orders of competent military authority, shall bar all rights, based upon the period of service from which discharged, under any laws administered by the Veterans Administration except my legal entitlement (if any) to any war risk Government (converted) or National Service Life Insurance. The only exception is in cases in which it is established, to the satisfaction of the Veterans Administration, that I was insane.

\_\_\_\_\_  
WITNESS' SIGNATURE

\_\_\_\_\_  
APPLICANT'S SIGNATURE

ENCLOSURE (5)

1

SAMPLE APPOINTING ORDER

HEADING

From: Commanding Officer  
To: Captain \_\_\_\_\_ 000 00 00 00/0000 USMCR  
  
Subj: INVESTIGATION TO INQUIRE INTO THE APPLICATION FOR  
CONSCIENTIOUS OBJECTOR STATUS 1-0/1-A-O; CASE OF LANCE  
CORPORAL \_\_\_\_\_ 000 00 00 00/0000 USMC  
  
Ref: (a) MCO 1306.16E  
(b) MCO 1900.16C

1. Effective this date, Captain \_\_\_\_\_, United States Marine Corps Reserve, is appointed as Hearing Officer, for the purpose of conducting an investigation, per the provisions contained in references (a) and (b), to inquire into all the circumstances connected with the claim of Lance Corporal \_\_\_\_\_ as a conscientious objector.

2. You are to review the regulations as set forth in references (a) and (b) and afford the applicant every right and assistance as set forth therein. After conducting a thorough investigation into all the facts concerning this case and holding a hearing as set forth in reference (a), you will submit your report and documentation to this Headquarters, with conclusions and recommended disposition.

//Signature//

ENCLOSURE (6)

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GUIDE TO THE INVESTIGATING OFFICER

1. On being appointed to investigate a claim of conscientious objection, the investigating officer will become familiar with this Order, and as necessary, obtain legal advice from the local staff judge advocate or legal officer.
2. The investigating officer must keep in mind that the final decisions will be made without the benefit of observing either the applicant or any of the witnesses. With this in mind, every effort should be made to compile as thorough and clearly written record as possible.
3. As part of the investigation, the investigating officer will seek information from commanders, supervisors, co-workers, clergy, friends, records, and any other sources which may contribute to the final recommendation. Information so obtained will be presented to the applicant at the hearing. At a minimum, the investigating officer should include in the investigative report, and should present to the applicant at the hearing, the results of the investigating officer's conversations with the applicant's immediate work supervisor, immediate commanding officer, at least two individuals who are billeted with the applicant, if available, and the investigating officer's views on whether the service record book of the applicant contains information which either supports or tends to contradict the applicant's claim of conscientious objection.
4. The investigating officer will conduct a hearing on the application. The purpose of the hearing is to afford the applicant an opportunity to present any evidence desired in support of the application; to enable the investigating officer to ascertain and assemble all relevant facts; to create a comprehensive record; and to facilitate an informed recommendation by the investigating officer and an informed decision on the merits of the application by higher authority.
  - a. If applicants desire, they shall be entitled to be represented by counsel, at their own expense, who shall be permitted to be present at the hearing, assist applicants in the presentation of their cases, and examine all items in the file.
  - b. Should applicants refuse to make a statement, orally or in writing, during the conduct of the hearing, they will submit a signed statement in their own handwriting that they have been afforded the opportunity to appear in person at the hearing with counsel retained by them, if desired, and that they refuse to make a statement.
  - c. In this regard, any failure or refusal of the applicant to submit to questioning under oath or affirmation before the investigating officer may be considered by the officer making a recommendation and evaluation of the applicant's claim.

ENCLOSURE (7)

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d. If applicants fail to appear at the hearing without good cause, the investigating officer may proceed in their absence and the applicants will be deemed to have waived their appearance.

e. The hearing will be informal in character and will not be governed by the rules of evidence employed by courts-martial, except that all oral testimony presented shall be under oath or affirmation. Any relevant evidence may be received. Statements obtained from persons not present at the hearing need not be made under oath or affirmation. The hearing is not an adversary proceeding.

f. Commanders will render all reasonable assistance in making all military members of their command, requested by the applicant, available as witnesses.

g. A verbatim record of the hearing is not required. If applicants desire such a record and agree to provide it at their own expense, they may do so. A verbatim record must be submitted in typewritten form, identifying the persons making each question, response, or statement. Tape recordings and other electronic or mechanical recordings are not acceptable as a verbatim record. If applicants elect to provide such a record, they shall make a copy thereof available to the investigating officer, at no expense to the Government, at the conclusion of the hearing. In the absence of a verbatim record, the investigating officer will summarize the testimony of witnesses and permit the applicant and counsel to examine the summaries and note for the record their differences with the investigating officer's summary. Copies of statements and other documents received in evidence will be made a part of the hearing record. The investigating officer has the responsibility for authenticating the hearing record, and that version is final as to the record of the testimony of the witnesses.

5. At the conclusion of the investigation, the investigating officer will prepare a written report which will contain the following:

a. A statement as to whether the applicant appeared, whether the applicant was accompanied by counsel and, if so, the latter's identity, and whether the nature and purpose of the hearing were explained to the applicant and understood.

b. A statement as to whether the applicant was advised of the right to have a verbatim record of the hearing, at own expense, and whether the applicant chose to or chose not to have a verbatim record of the hearing.

c. Any documents, statements, and other material received during the investigation. These documents should include certified copies of pages 3, 5, 6, 8, 11, and 12 of the applicant's service record book.

d. Summaries of the testimony of the witnesses presented (or a verbatim record of the testimony if such record was made).

ENCLOSURE (7)

e. A statement of the investigating officer's conclusions as to the underlying basis of the applicant's conscientious objection and the sincerity of the applicant's beliefs, including the reason for such conclusions and the facts upon which they were based. The investigating officer should establish the presence/absence of the basic criteria listed in paragraph 5b of this Order.

f. The investigating officer's recommendation for disposition of the case, including the reasons therefor (ensure compliance with paragraph 5e of this Order). The actions recommended will be limited to the following:

- (1) Denial of any classification as a conscientious objector; or
- (2) Classification as 1-A-0 conscientious objector; or
- (3) Classification as 1-0 conscientious objector.

g. In the preparation of the investigative report, the investigating officer must keep in mind that bare conclusions regarding a particular applicant, the credibility, the sincerity or any other relevant factor, are of minimal assistance in reaching a determination whether to approve a particular application at the HQMC level. The investigating officer should set forth observations, including a detailed statement of the efforts expended in investigating the application, to assist the ultimate decision maker in considering the application for conscientious objector status.

h. The investigating officer's report, along with the individual's application, the chaplain's and doctor's report, and any other items submitted by the applicant in support of the case will constitute the record. The investigating officer's conclusions and recommended disposition will be based on the entire record and not merely on the evidence produced at the hearings. A copy of the report will be furnished to the applicant at the time it is forwarded to the commander who appointed the investigating officer, and the applicant will be informed of the right to submit a rebuttal to the report within 7 days. The convening authority's forwarding endorsement will include a statement from the applicant acknowledging receipt of a copy of the investigating officer's report and contain either a rebuttal to the investigating officer's report or a statement that no rebuttal will be submitted. See enclosure (8) for Sample Investigating Officer's Report.

ENCLOSURE (7)



SAMPLE INVESTIGATING OFFICER'S REPORT

HEADING

N O T I C E - This sample is provided as a guide to the preparation of your report. It reflects the factual detail necessary to support logical conclusions. The evidence presented must support your recommendation for approval or disapproval of the application. Your recommendations will be based upon appropriate regulations and your perception of the applicant's beliefs.

From: Captain \_\_\_\_\_ 000 00 00 00/0000 USMCR  
To: Commanding Officer, \_\_\_\_\_, MCAS, El Toro,  
California 92709-6010

Subj: REVIEW OF REQUEST FOR CONSCIENTIOUS OBJECTOR STATUS;  
CASE OF LANCE CORPORAL \_\_\_\_\_ 000 00 00 00/0000 USMC

Ref: (a) MCO 1306.16E

Encl: (1) Commanding Officer, \_\_\_\_\_, Appointing Order  
(2) General Information Sheet and Request for Discharge  
as a Conscientious Objector  
(3) Chaplain's Interview dtd \_\_\_\_\_  
(4) Record of Psychiatric Examination dtd \_\_\_\_\_  
(5) Letter from \_\_\_\_\_ dtd \_\_\_\_\_  
(6) Letter from \_\_\_\_\_ dtd \_\_\_\_\_  
(7) Certified Copies of Lance Corporal \_\_\_\_\_  
service record book, pages 3, 5, 6, 8, 11, and 12

1. Pursuant to enclosure (1) and paragraph 6 of the reference, a hearing of the subject application was conducted at \_\_\_\_\_ (time/date). Present at the hearing were the applicant and the hearing officer, Captain \_\_\_\_\_, USMCR. (Name all witnesses here.)

2. Applicant was advised of rights and examined all documents or information relevant to the application and reviewed enclosures (2) through (7) for content and accuracy.

3. The applicant was advised of right to counsel and expressed understanding of the right to have an attorney present but desired to proceed with the hearing without counsel.

4. The applicant was advised of the right to have a verbatim transcript of the hearing at applicant's own expense. The applicant was further advised that unless a qualified recorder was provided at the applicant's expense, the hearing would proceed and the hearing officer's version would be final as to testimony taken at the hearing. The applicant acknowledged

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understanding this right, the legal effect of proceedings without a recorder and that the applicant wished to waive the right to verbatim transcripts. The applicant was advised that the hearing could be continued to another date if additional time was needed to obtain either counsel or a recorder. Lance Corporal \_\_\_\_\_ again waived the right to an attorney or a verbatim record. The applicant was also advised and acknowledged understanding the possible effects of discharge as a conscientious objector.

5. Lance Corporal \_\_\_\_\_ was thoroughly advised of the nature and purpose of the hearing, and I am satisfied that the applicant understood the advice.

6. This report is submitted pursuant to paragraph 6e of the reference. The applicant was advised of the right to call witnesses or present other supporting evidence as desired. The applicant was also advised that a delay in the hearing to produce such witnesses could be obtained. Lance Corporal \_\_\_\_\_ desired to make a sworn statement on the (his/her) behalf and answer the questions of the hearing officer (but) and did (not) submit (any) additional evidence nor did the applicant call any other witnesses. (Name witnesses here.) The statements contained in enclosures (2) through (7) were also considered by the hearing officer in conjunction with the hearing.

7. A hearing was conducted in \_\_\_\_\_ in conference room on (date) between the hours of \_\_\_\_ and \_\_\_\_\_. During the hearing the applicant expressed the reasons why a discharge was sought from the U.S. Marine Corps. The statement was (was not) in consonance with opinions and background provided in enclosure (2). In summary (carefully summarize all evidence and the testimony of each witness, for it is upon this information that the applicant's case will be decided).

8. Opinion and Conclusions. I have arrived at the following opinions and conclusions as a result of the hearing conducted on (date) and based on review of the reference.

I consider Lance Corporal \_\_\_\_\_ (not) to be a conscientious objector within the meaning of definition provided in the reference.

SET FORTH SPECIFIC RECOMMENDATIONS. EACH RECOMMENDATION SHOULD BE SUPPORTED BY SPECIFIC EVIDENCE OR TESTIMONY CITED ABOVE.

9. Based on the foregoing, I recommend that the applicant's petition for discharge based on conscientious objection be approved/disapproved.

10. I certify that I have, this date, delivered to the applicant a copy of the record of the case, as it now exists, per paragraph 6e of the reference, and that the applicant has been informed that 7 days from this date a rebuttal of the record must be submitted to the convening authority, if

ENCLOSURE (8)

MCO 1306.16E  
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desired. (The convening authority's subsequent forwarding endorsement on the record pursuant to paragraph 6f of the reference, should include a signed statement from the applicant acknowledging receipt of a copy of the investigating officer's report with either a rebuttal to the report or a statement that no rebuttal will be submitted.)

X. X. XXXXXXXXXXXXX

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APPELLATE EXHIBIT

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COUNSELING CONCERNING  
DESIGNATION AS A CONSCIENTIOUS OBJECTOR

I have been counseled concerning designation as a conscientious objector. Based on my religious, moral or ethical training, and belief, I consider myself to be a conscientious objector within the meaning of statute and regulations governing conscientious objectors and am conscientiously opposed to participation in combatant duties for the remainder of my term of service. I fully understand that on expiration of my current term of service. I fully understand that on expiration of my current term of service I may not be eligible for voluntary enlistment, reenlistment, or active service in the Armed Forces.

\_\_\_\_\_  
WITNESS' SIGNATURE

\_\_\_\_\_  
APPLICANT'S SIGNATURE

\_\_\_\_\_  
DATE

ENCLOSURE (9)

1

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SELECTIVE SERVICE PROCEDURES

1. No Marine whose beliefs existed before service is eligible for classification as a conscientious objector if they failed to request classification from, or if a request for classification was denied by the Selective Service System.
2. CMC (MM) will be notified when an inducted Marine:
  - a. Claims to have been classified as a conscientious objector by the Selective Service System, but records do not so indicate; or
  - b. Claims to have been erroneously denied Selective Service System classification as a conscientious objector.
3. In either case, CMC (MM) will contact the Selective Service System to resolve the conflict.
4. Pending this resolution, the commanding general of the recruit depot will assign the Marine to a regular recruit platoon, and the Marine will participate in all recruit training except that about the use or handling of weapons.
5. If the Marine's claim is true, Headquarters Marine Corps will select either separation as an erroneous enlistment or assignment to noncombatant duties based on the specific circumstances of the case.
6. If the claim is untrue, Headquarters Marine Corps will notify the Marine through the commanding general of the recruit depot, and the Marine will return to full training.

ENCLOSURE (10)

UNITED STATES MARINE CORPS  
IN THE SIERRA JUDICIAL CIRCUIT

UNITED STATES	)	
	)	
v.	)	
	)	
GARY P. PITTMAN	)	DEFENSE SEVENTH DISCOVERY
(b)(6)	)	REQUEST
SERGEANT	)	
U. S. Marine Corps Reserve	)	

SERGEANT GARY P. PITTMAN, U.S. Marine Corps, by and through detailed defense counsel, Captain W. A. Folk, and civilian counsel, Mr. John Tranberg, hereby requests that the trial counsel provide the following information regarding the government's operational law expert, Dr. Gary D. Solis, and additional items of evidentiary value, at the earliest possible date.

1. A copy of the text or transcript, or any fair and accurate reproduction of the following items:

✓ a. The lecture presented at the Public Affairs Veteran's Forum lecture series. "The Law of war, Abu Ghraib, and War Crimes." Presented in Washington, D.C. 10 June 2004.\

b. The Lecture presented at Catholic University, Columbus School of Law. "Trying war Crimes." Washington, D.C. 18 July 2001.

✓ c. The paper presented at the judicial conference of the United States Court of Appeals of the Armed Forces. Paper: "Obedience to Orders and the law of War: The Once and Future War Crimes Defense." Washington, D.C. 7 May 1999.

~~d. The interview presented on National Public Radio, regarding the discussion of the history and purpose of the Geneva Conventions, on the Kojo Nnamdi Show on 24 June 2004.~~

e. The televised interview regarding courts-martial of Abu Ghraib accused shown on CNN International on 21 June 2004.

f. The televised discussion of offenses committed in Iraq's Abu Ghraib prison, shown on CNN Late Night news on 20 June 2004.

g. Radio discussion on the topic of what constitutes torture in military and in international law on National Public Radio, in Washington D.C., on 21 May 2004.

h. Televised commentary on the applicable law in U.S. prisons in Iraq, broadcast on Cox Television Network on 19 May 2004.

i. Radio interview providing commentary on U.S. court-martial procedure, broadcast on National Public Radio, in Washington, D.C. on 6 May 2004.

j. Televised broadcast on CNBC news with John Sinenthaler, regarding discussion of offenses committed in Iraq's Abu Ghraib prison on 3 May 2004.

k. Televised broadcast on The News Hour, with Jim Lehrer, televised discussion of Abu Graib prison offenses on 3 May 2004.

l. Televised broadcast on CBS Television Network Late Night News: Up to the Minute providing commentary on the Geneva Conventions and their applicability in Iraq, conducted on 4 May 2004.

m. Radio broadcast on National Public Radio regarding commentary on the first charges against Guantanamo detainees on 25 February 2004.

2. The following evidentiary items are also requested:

- a. Rough notes to I MEF CIHO based on Staff Sergeant (b)(6) 29 June 2004 deposition testimony.
- b. Any typed or handwritten notes given to the S-2 at 2/25 by the members of the HET team interviewing (b)(6)
- c. The handwritten screening report created by HET team members during the interview with (b)(6) as testified to by Staff Sergeant (b)(6)
- d. A copy of the picture taken of (b)(6) by HET, this was sent back with screening report to the I MEF CIHO. (b)(6) took this picture.
- e. Case agent notes taken from the NCIS interview of Staff Sergeant (b)(6) conducted at the Camp Lejeune Staff Academy.
- f. Sgt Haidar's counterintelligence information report that was passed to the 2/25 S-2.
- g. Notes taken by NCIS agents during the New York City interview of LCPL (b)(6)

3. This discovery request is continuing and shall apply to any additional charges or specifications that may be preferred after this request for discovery is served on the government. Immediate written notification is requested on all items the government is unable or unwilling to produce.

The defense acknowledges that certain of these requests may have been partially complied with prior to this discovery request. Those matters previously provided need not be duplicated.

The defense reserves the right to make additional continuing discovery requests.

The defense requests a written response to this request.

/S/

J. Tranberg & W. A. Folk



**CERTIFICATE OF SERVICE**

This certifies that I served a copy of the foregoing on Trial Counsel by electronic mail on this 30th of June 2004.

/S/

W. A. FOLK

APPELLATE EXHIBIT

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PAGE

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OF

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UNITED STATES MARINE CORPS  
GENERAL COURT-MARTIAL  
SIERRA JUDICIAL CIRCUIT

UNITED STATES	)	
	)	
v.	)	<b>MOTION FOR APPROPRIATE RELIEF</b>
	)	
GARY P. PITTMAN	)	
(b)(6)	)	<b>Supplement to Defense Request for continuance</b>
Sergeant	)	
U.S. Marine Corps	)	<b>28 July 2004</b>
	)	

1. **Nature of the Motion:** Pursuant to Article 40, UCMJ, and R.C.M. 906(b)(1), the defense moves the court to grant a continuance in the trial dates for a period of forty-five (45) days.

2. **Summary of Facts:** The following facts are added to supplement the initial defense request for a continuance filed on 22 June 2004.

- The military judge ordered the production of all paperwork associated with Sergeant John Hennagin's request for conscientious objector status. This has not been provided to the defense.

- The military judge ordered the production of various transcripts from speeches and interviews performed by Dr. Gary Solis. These have not been provided to the defense.

- The military judge ordered the production of NCIC checks on all government witnesses. These have not been provided to the defense.

- The military judge ordered the production of all criminal records and immigration records for Mr. (b)(6). These records have not been provided to the defense.

- The government agreed to provide the handwritten notes of NCIS agents from the interview of Staff Sergeant (b)(6) conducted at Camp Lejuene. These notes have not been provided.

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OF

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• The government agreed to provide the handwritten notes of NCIS agents from the interview of Lance Corporal (b)(6), conducted in New York City. These notes have not been provided.

• The government appointed expert consultant in forensic pathology, Captain Jim Green, U. S. Navy, has not yet reviewed any of the materials, to include photographs, written materials, and transcripts, provided to him by defense counsel.

• The government, in correspondence dated 15 July 2004, has informed defense counsel of its intention to Call Captain (b)(6) employee, and Sergeant Pittman's former supervisor, to essentially testify as an expert, regarding the standard of care and the acceptable use of force by correctional officers at the (b)(6). The defense has not yet had an opportunity to speak to Captain (b)(6). Further, defense counsel believe that the defense team should be provided with an expert consultant in the field of (b)(6) in order to prepare for this government witness.

3. **Discussion:** This motion incorporates all discussion from the 22 June 2004 defense motion for continuance.

4. **Relief Requested:** Pursuant to R.C.M. 906(b)(1), the defense respectfully requests the court to grant a continuance for a period of forty-five (45) days.

5. **Evidence:** The defense has already presented evidence in support of this motion.

6. **Oral Argument:** The defense requests oral argument.

  
J. TRANBERG

  
W. A. FOLK

\*\*\*\*\*

Certificate of Service

I certify that a true copy of this motion was served on opposing counsel on this 20th day of July, 2004.

  
W. A. FOLK

GENERAL COURT MARTIAL  
UNITED STATES MARINE CORPS  
SIERRA JUDICIAL CIRCUIT

UNITED STATES	)	
	)	
v.	)	Government Answer to Motion for
	)	Appropriate Relief (Supplement to
GARY P. PITTMAN	)	Defense Request for Continuance)
(b)(6)	)	
Sergeant	)	
U.S. MARINE CORPS	)	

---

1. Nature of Answer. To argue that the Defense request for a forty-five (45) day Continuance be denied.

2. Summary of Facts. In response to the facts alleged in the Defense's 28 July 2004 Request for Appropriate Relief, the Government submits the following:

a. Conscientious Objector Package: The Government has requested a copy of Sergeant (b)(6) request for conscientious objector status from Headquarters, U.S. Marine Corps (HQMC) and Marine Forces Pacific (MARFORPAC). HQMC and the Staff Judge Advocate for MARFORPAC do not have copies of the conscientious objector package. An additional request has been made to Mr. Womack, Sergeant (b)(6) attorney, for the package. If a copy has been kept by Sergeant (b)(6) it should be received and provided to the Defense by close of business 27 July 2004.

b. Dr. Solis Information. The Government has provided copies of items in Dr. Solis' possession including an audiotape and notes. The Government does not intend to obtain any additional information for the Defense for this issue. The Military Judge has not made a ruling as to the production of any additional documents other than what has already been provided to the Defense on this issue.

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c. NCIC Checks. The Government will provide results of the NCIC checks on all of its witnesses by close of business 27 July 2004. NCIS has completed these checks.

d. U.S. Attorney and INS Files re: (b)(6) The Trial Counsel has contacted the U.S. Attorney's Office that prosecuted (b)(6) and the Immigration and Naturalization Service. Currently, the Trial Counsel has not received each agency's respective files; however, the Government is continuing to press these agencies to produce the files and anticipates that they will be received by the end of the week.

e. Staff Sergeant (b)(6) Notes. The Government intends to produce NCIS agent's handwritten notes from the Staff Sergeant (b)(6) interview by close of business 27 July 2004.

f. Lance Corporal (b)(6) Notes. NCIS is unaware of any interview of Lance Corporal (b)(6) testified to by Lance Corporal (b)(6) at his deposition taken in New York. The time of the interview coincides with interviews conducted by the Trial Counsel, Captain Crockett. The Government believes that Lance Corporal (b)(6) is confusing Captain Crockett with an NCIS agent. Any notes Captain Crockett may have kept are attorney work product.

(b)(6)



Government's Military Rule of Evidence 404b Motion. His testimony will establish the evidence of the accused's consciousness of guilt via his false exculpatory statement.

3. Discussion. The Government is taking all necessary steps to ensure that documents requested by the Defense are produced by the end of this week as listed in the Statement of Facts.

4. Relief Requested. That the defense motion be denied.

5. Evidence. The government will offer no evidence.

6. Oral Argument. The government does desire oral argument in support of this motion.

26 July 2004

Date

/s/

W.D. HOOD  
Captain, USMCR  
Trial Counsel

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### CERTIFICATE OF SERVICE

I certify that on 26 July 2004, I caused a copy of this motion to be served on the defense counsel via electronic mail and facsimile.

/s/

W.D. HOOD  
Captain, USMCR  
Trial Counsel

APPELLATE EXHIBIT XLVI  
PAGE 3 OF 3

UNITED STATES MARINE CORPS  
GENERAL COURT-MARTIAL  
SIERRA JUDICIAL CIRCUIT

UNITED STATES	)	
	)	
v.	)	<b>MOTION FOR APPROPRIATE</b>
	)	<b>RELIEF</b>
GARY P. PITTMAN	)	<b>[Exclusion of photographic evidence]</b>
(b)(6)	)	
Sergeant	)	<b>28 July 2004</b>
U.S. Marine Corps	)	

1. **Nature of the Motion:** The defense moves the court to exclude all photographs of (b)(6) (b)(6) (Enclosed as Defense Exhibit 1) based on their inadmissibility under Military Rule of Evidence 403.

2. **Summary of Facts:** Sergeant Gary Pittman (hereinafter, "Sergeant Pittman") was a member of Second Battalion, Twenty-Fifth Marines (hereinafter, "2/25") assigned to work as a guard at the Camp Whitehorse Detention Facility, located in An Nasiriyah, Iraq, in April 2004. Sergeant Pittman worked at Camp Whitehorse until July 2003.

One of the detainees that stayed at Camp Whitehorse was an Iraqi, (b)(6) (hereinafter, (b)(6)) was captured during a raid conducted by Weapons Company, 2/25. (b)(6) was brought to Camp Whitehorse shortly after his capture on 3 June 2003. Following his capture he was strip-searched, interrogated, and detained at Camp Whitehorse. Sometime on the early morning of 6 June 2003 (b)(6) was found dead in the recreation area of the Camp Whitehorse detention facility.

Following (b)(6)'s death a number of photographs were taken of his body. Some were taken as part of an autopsy that was conducted by Lieutenant Colonel (b)(6)

APPELLATE EXHIBIT XLVII(42)  
PAGE 1 OF 2



USA (hereinafter, "Lieutenant Colonel (b)(6)". The great majority of these photographs show (b)(6) body after it sat in over 100 degree heat for multiple days and decomposed to a great extent. The autopsy photographs taken of (b)(6) body consist of over one hundred (100) photos. (See Enclosure, color photographs). They consist of a series of photos of (b)(6) face and various portions of his body, while lying on a black tarp. These photographs depict Mr. (b)(6) body and face. There are also a number of pictures of (b)(6) hyoid bone and windpipe after being excised from his corpse. Finally, there are photographs of (b)(6) skull and internal organs. In addition, approximately thirty (30) photos were taken in conjunction with the investigation into (b)(6) death that was conducted by the Naval Criminal Investigative Service (hereinafter, "NCIS") and members of 2/25. These photos were taken before the pictures taken in conjunction with (b)(6) autopsy. Even these photos, however, were taken after Mr. (b)(6) body sat out in the sun in high heat for numerous hours, was dropped numerous times by detainees at Camp Whitehorse and Commander (b)(6) (hereinafter, "Commander (b)(6)" and after he had been deceased for at least eighteen (18) hours. (Enclosure, Article 32 testimony of Commander (b)(6) and Enclosure, Deposition testimony of HM3 (b)(6). Numerous witnesses have testified that even the least decomposed post-mortem pictures of (b)(6) are not fair and accurate depictions of his appearance while he was alive.

3. **Discussion:** The prejudicial value of the post-mortem photographs of (b)(6) body substantially outweighs their probative value and are therefore inadmissible. If the probative value of evidence is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading of the members, or by considerations of undue delay, waste of time, or needless presentation of evidence, then it is inadmissible. MIL. R. EVID. 403. Photographs are not admissible for "the illegitimate purpose of inflaming or shocking the court-martial." U.S. v. Burks,

36 M.J. 447 (C.M.A. 1993); U.S. v. White, 23 M.J. 84, 88 (C.M.A. 1986). The numerous post-mortem photographs of (b)(6) have little probative value with regard to the charges of dereliction of duty and assault consummated by a battery; the prejudicial effect of these photographs of (b)(6) body will have a highly prejudicial effect on the fact-finder, will confuse the issues in this case and mislead the members as to the nature of the case. Finally, the photographs have minimal probative value and should not be admitted.

The aforementioned photographs of (b)(6) will provide little to no assistance to the trier of fact in this case and will serve to unduly inflame the trier of fact's passions, confuse the issues in this case and create a substantial likelihood of unfair prejudice against Sergeant Pittman.

Photographs that fail the M.R.E. 403 balancing test are not admissible. U.S. v. Rawden, 1194 C.C.A. Lexis 100, citing U.S. v. Mobley, 28 M.J. 1024 (C.M.R. 1989). There is a long line of precedent in *homicide* cases that admit photographs of a deceased victim that are accurate and relevant to aid the court in understanding testimony and as direct evidence of the subject matter.

See U.S. v. Bellamy, 47 C.M.R. 319, 321 (A.C.M.R. 1973) (three photographs of victim, one of a wound with brain protruding from head held admissible where there is a dispute over the angle of the bullet's entrance to the victim's skull); U.S. v. Noreen, 48 C.M.R. 228, 233 (A.C.M.R. 1973) (three photos of the nude body of the deceased in a "gruesome death scene" admissible to: 1) assist testimony of all witnesses who viewed the murder scene; 2) as an accurate depiction of the condition of the premises; 3) to show the position of the body in relation to furniture and clothing in the room; 4) show the nature and the extent of the wounds; 5) to identify the deceased). The facts and the nature of the charges in the instant case, however, are easily distinguished from those contained in the string of homicide cases admitting photographs of a victim.

The post-mortem photographs of Mr. (b)(6) body have little probative value.

In Wigmore's view, "probative value" refers to a logical tendency to show or indicate the material fact for which the evidence is offered. McCormick agrees, maintaining that probative evidence is evidence with a tendency to establish "the reference for which it is offered." Finally, Lilly states that the probative value of evidence is found in "the presence of a logical relationship between the evidence and the ultimate proposition that the evidence is offered to support." Thus, our legal tradition contemplates that probative evidence must have a tendency in logic to establish the material fact for which it is offered

U.S. v. Wiley, 36 M.J. 825, 830 (A.C.M.R. 1993) quoting, Sonenshien, David A. The Residual Exceptions to the Federal Hearsay Rule: Two Exceptions in search of a Rule, 57 N.Y.U. L. Rev 867 (1982).

Sergeant Pittman is charged with dereliction of duty and assault consummated by a battery. (See Charge Sheet dated 16 October 2003, Additional Charge Sheet dated 6 April 2004). The dereliction of duty charges allege the following: (1) Charge I Specification 1: that Sergeant Pittman was derelict in the performance of his duties in that he willfully failed to properly safeguard the physical health, welfare, and treatment of unknown Iraqi prisoners of the Camp Whitehorse detention facility; (2) that he was derelict in the performance of his duties in that he willfully failed to properly safeguard the physical health, welfare, and treatment of (b)(6). It is clear that the photos of (b)(6) have no probative value as it relates to this specification.

The second dereliction of duty specification relates to Sergeant Pittman as derelict in the performance of his duties that related to (b)(6). There is no evidence that any of the post-mortem photographs of (b)(6) have any probative value as it relates to this specification.

The three specifications under Charge II, all allege that Sergeant Pittman assaulted members of Camp Whitehorse. Only one of these three specifications has any relationship to (b)(6), and this specification simply alleges that Sergeant Pittman hit (b)(6). The specification does not,

however, give any specific information regarding where it alleges (b)(6) was hit, with what he was hit, or how many times he was hit.

The additional charge and sole specification thereunder allege that (b)(6) kicked Mr. (b)(6) "in the body with his feet."

These post-mortem photographs of (b)(6) body have little probative value with regard to the charges and specifications that Sergeant Pittman faces. These photographs do not make more likely the possibility that Sergeant Pittman was derelict in the performance of his duties as alleged in specifications 1-2 of Charge I, or that he assaulted anyone, as alleged in the specifications under Charge II, or the sole specification under the Additional Charge. The post-mortem photos of Mr. (b)(6) body were taken in an Iraqi morgue far from the confines of the Camp Whitehorse Detention Facility. As a result, these photographs provide: (1) no details regarding the appearance of the alleged crime scene; (2) no details regarding the location of the alleged crime scene; (3) no details regarding the condition of the body when found at the alleged crime scene; (4) no details regarding the position of the body when found at the alleged crime scene. What little probative value these photographs may have would be to identify the deceased. The photos, however, even fail to accomplish this task. Numerous witnesses have testified that even the least decomposed post-mortem photographs of (b)(6) do not fairly and accurately depict his appearance while he was alive. They have testified at length that the photographs provided by the government show extensive facial bruising that was not present when (b)(6) was alive, show sand and dust in the nose and on the face of (b)(6) and fail to accurately depict (b)(6) ante mortem appearance. The post-mortem photographs provide a gruesome and inflammatory depiction of the appearance of the human body after decompositional forces have taken effect.

These photographs provide insight into the appearance of a decomposing body but

accomplish little more. The doctor performing the autopsy on (b)(6) concluded that the cause of death was asphyxia which was the result of a fractured hyoid bone.

Based on these autopsy findings and the investigative and historical information available to me, this believed to be 52 year old Male, (b)(6) died as a result of asphyxia (lack of oxygen to the brain) due to strangulation as evidenced by the recently fractured hyoid bone in the neck.

See Defense Enclosure, Final  
Autopsy Report & Post Mortem  
Examination

None of the charges against Sergeant Pittman allege any misconduct with any connection to Mr. (b)(6) neck or hyoid bone. In fact, the assaults alleged against Sergeant Pittman that are directed towards (b)(6) involve an unknown portion of (b)(6) body. The probative value of these photographs is further reduced by the fact that the photographs depict a severely decomposed body. Many of the photographs of (b)(6) head and face illustrate unidentifiable globs of tissue, bloated facial features, severely dried eyeballs, and discolored skin. The photographs of (b)(6) are shocking and gruesome depictions of a severely decomposed human body. Even the photographs depicting (b)(6) in his least decomposed state do not accurately depict his appearance while living. Numerous witnesses have testified that the photographs of (b)(6) showing him in his "least decomposed" state do not constitute fair and accurate depictions of his appearance while he was living. Their minimal probative value is clearly outweighed by their prejudicial effect and as a result should be held inadmissible.

4. **Nature of Relief:** The defense requests that all post-mortem photographs of (b)(6) body be ruled inadmissible.

5. **Evidence:** The defense has attached documentary evidence to this motion.

  
J. TRANBERG

  
W. A. FOLK

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I CERTIFY THAT I SERVED A COPY OF THIS MOTION ON GOVERNMENT COUNSEL ON  
20 July 2004 VIA ELECTRONIC MAIL.

  
W. A. FOLK

GENERAL COURT MARTIAL  
UNITED STATES MARINE CORPS  
SIERRA JUDICIAL CIRCUIT

UNITED STATES )

v. )

GARY P. PITTMAN )

(b)(6) )

Sergeant )

U.S. MARINE CORPS )

Government Answer to Motion for  
Appropriate Relief (Exclusion of  
Photographic Evidence)

1. Nature of Answer. To argue that photographs of (b)(6) are admissible under Military Rule of Evidence 403.
2. Summary of Facts. The Government agrees with the Defense recitation of the facts.
3. Discussion. The probative value of the post-mortem photographs outweighs their prejudicial value and should be admitted. The Government does not intend to introduce all of the photographs taken of (b)(6). The government will introduce only those photographs that depict relevant injuries or that identify (b)(6) Lieutenant Colonel (b)(6) will testify as to these injuries to (b)(6) legs, chest, and back that are pre-death. In addition, the photographs of (b)(6) injuries will corroborate the testimony of Private First Class (b)(6). The pictures will also be used to identify Mr. (b)(6) the victim in this court-martial. Photographs depicting injuries and identifying the victim will assist the members and are more probative than prejudicial.
4. Relief Requested. That the defense motion be denied.
5. Evidence. The government will offer copies of the photographs it intends to offer in its case in chief.

6. Oral Argument. The government does desire oral argument in support of this motion.

26 July 2004

Date

/s/

W.D. HOOD  
Captain, USMCR  
Trial Counsel

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### CERTIFICATE OF SERVICE

I certify that on 26 July 2004, I caused a copy of this motion to be served on the defense counsel via electronic mail and facsimile.

/s/

W.D. HOOD  
Captain, USMCR  
Trial Counsel

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APPELLATE EXHIBIT XLVIII  
PAGE 2 OF 2